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(HANSARD)

Monday, March 21, 2005

THE HONOURABLE DANIEL HAYS
SPEAKER

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THE SENATE

Monday, March 21, 2005

The Senate met at 6 p.m., the Speaker in the chair.

Prayers.

OFFICIAL LANGUAGES

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

> That the Standing Senate Committee on Official Languages have power to continue sitting while the Senate is sitting today, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

[*Translation*]

SENATORS' STATEMENTS

INTERNATIONAL DAY OF THE FRANCOPHONIE

Hon. Gerald J. Comeau: Honourable senators, I am honoured and proud to pay tribute to International Day of the Francophonie, marked yesterday. This day is celebrated each March 20 and is an opportunity to introduce and promote the Francophonie, in addition to opening up Canada to the rest of the world.

The term "Francophonie" includes all the people who speak French and all the countries where French is used. The process to recognize the Francophonie began when the Agence de coopération culturelle et technique, now called the Agence de la Francophonie, was created in Niamey, Niger, on March 20, 1970. Initially, the agency represented 21 governments, including Canada, which was one of the founding members and which continues today to play a major role in this organization.

Quebec and New Brunswick are the only two Canadian provinces to enjoy participating government status. Today, the Organisation internationale de la Francophonie includes 63 states and governments on five continents, who share the French language and common values.

The heads of state and governments of the Francophonie meet every two years at a summit to discuss public policy for the Francophonie and to engage in dialogue on all major international issues of the day, on subjects of mutual concern in the political, economic and cooperative spheres.

The first summit, which Senator Lynch-Staunton and I had the honour of attending, was held in 1986 in Paris and the most recent in Ouagadougou, Burkina Faso, in 2004. The next one will take place in 2006 in Bucharest, Romania.

The Francophonie is an integral part of our national identity. All Canadians should be aware of its importance, both domestically and internationally. It enables us to share the vitality of Canada's French-speaking communities with the rest of the world and to discover the diversity of peoples on the international scene, a considerable asset and a source of creativity and energy. In addition, it enables us to build closer ties and enriching relationships on every continent.

Canada's participation in the Francophonie is part of our foreign policy and undeniably represents an incredible advantage and added value for all Canadians, since it gives us a window on the world. It enables us to develop partnerships and constitutes a promotional asset and an element of expertise for our nation.

In conclusion, being part of the Francophonie gives Canadians opportunities for international outreach in language, culture, politics and economics, and also provides access to new technologies and to international cooperation.

[*English*]

NATIONAL CURLING CLUB VOLUNTEER OF THE YEAR AWARD

CONGRATULATIONS TO MR. DELBERT COMEAU

Hon. Terry M. Mercer: Honourable senators, there are many things in my life that I hold dear to my heart, including the sport of curling and my work in the charity field. The sport of curling has long been a favourite of mine. I encourage you all to experience it first hand. It is fast becoming a cult phenomenon in Canada, and one of which I am proud to be part.

Many times in this chamber I have extolled the virtues of volunteerism and its profound influence on the social fabric of Canadian society. It is people helping people, because it is the right thing to do, not because it is the required thing to do.

I am pleased that both my favourite passions have played together this past month. On March 9, 2005, the President of the Canadian Curling Association, Barry Greenberg, announced the volunteer of the year award to Mr. Delbert Comeau of the Clare Curling Club in beautiful Meteghan, Nova Scotia.

Honourable senators, Mr. Comeau is the recipient of the National Curling Club Volunteer of the Year Award for the 2004 season. His efforts in the summer prior to the 2003-04 curling season were highly influential in completing major renovations to the Clare Club. Mr. Comeau helped to install a furnace to heat the ice area, and supervised the hosting of key events at the club during the 2004 Congrès Mondiale Acadien.

To quote the Canadian Curling Association:

> Mr. Comeau has demonstrated exemplary devotion to the success of the Clare Club and its future.

I am very proud to add my congratulations to Mr. Comeau and the members of the Clare Curling Club for this prestigious honour.

Honourable senators, it is events like this that remind us that volunteering in any form is vital to our society. It teaches us to remember generosity and kindness, to promote volunteering often, and to encourage others to follow in the footsteps of the many volunteers that shape our caring society.

INTERNATIONAL DAY FOR THE ELIMINATION OF RACIAL DISCRIMINATION

Hon. Donald H. Oliver: Honourable senators, today, March 21, is the International Day for the Elimination of Racial Discrimination. On this day in 1960, 70 peaceful demonstrators against apartheid were killed in Sharpeville, South Africa. Six years later, the United Nations declared this date the International Day for the Elimination of Racial Discrimination. Canada was one of the first countries to commemorate this day, which it has recognized since 1988.

• (1810)

My message today is that, unfortunately, racism remains alive and well in Canada. According to a study released today by Ipsos-Reid, roughly 4 million Canadians, one in six adults, have been recent victims of racism. Nearly 15 per cent of Canadians surveyed by Ipsos-Reid said skin colour makes a difference in their workplace. Seventeen per cent of those surveyed indicated that they think racism is on the rise in Canada. One in 10 respondents said they would not welcome people from another race as next-door neighbours. Thirteen per cent said they would never have a relationship with someone of another race.

Sadly, the facts indicate that racism, intolerance and race hatred are all painful realities in Canada today. To help end the racial prejudices that plague our society, nearly two years ago I commissioned the largest and most comprehensive study on visible minorities ever conducted in Canada. The report presents in detail the steps Canada must take to diversify its workforce, end systemic racism and implement what I call the "business case for diversity."

Essentially, honourable senators, the business case for diversity is a strategy that emphasizes how a diversity of cultures and opinions at all levels in the workplace can provide more creative solutions, enhance managerial decision-making and improve bottom-line results.

To conclude, ending racism and embracing diversity is precisely the message Her Excellency the Governor General gave in her annual statement to commemorate this day. She said:

> Together, we have discovered the incredible richness and beauty that diversity brings to our national life.... Experience tells us that the battle against discrimination requires continued vigilance, and that we must constantly promote greater understanding through education and dialogue. If we continue to respect our differences and draw strength from our diversity, we will remain a model of tolerance for the world to follow.

Honourable senators, I could not agree more.

CANADIAN RED CROSS

Hon. Catherine S. Callbeck: Honourable senators, I rise to recognize the hard work and dedication of the members of the Canadian Red Cross. March is Red Cross Month. Throughout the years, the members of the Red Cross strive to alleviate the suffering caused by fighting in places overseas and to offer assistance to those who have been struck by disaster. They are dedicated to improving the situation of the most vulnerable in Canada and around the globe.

The Red Cross can trace its beginnings to an Italian battlefield in 1859. A Swiss businessman, Henry Dunant, was horrified by the 40,000 dead and wounded left on the battlefield and by the lack of medical services to care for them. In 1864, he and four other Swiss citizens organized an international conference — the first Geneva Convention — and adopted the internationally recognized symbol of the red cross.

The Red Cross has evolved into an organization that provides assistance to people around the world. The important role of the Red Cross was most recently seen in the aftermath of the devastating tsunami in Southeast Asia. Canadians across the country came together to help the Red Cross in its work. Indeed, in my province of Prince Edward Island, workers and volunteers quickly responded to the outpouring of care and generosity from Islanders. Including funding from the federal government's matching program, about $1 million was raised on Prince Edward Island to assist in the relief efforts.

Our Red Cross workers sometimes give up the comforts of Canadian living in order to help those suffering abroad. They offer their time and energy here at home to prevent injury and death, and to ensure the well-being of children and adults through water safety, first aid and violence and abuse prevention programs.

Honourable senators, I ask you to join with me in recognizing and celebrating the many achievements of the Canadian Red Cross and to offer sincere best wishes for their efforts in this country and around the world.

CANADA-UNITED STATES RELATIONS

BOVINE SPONGIFORM ENCEPHALOPATHY— CLOSURE OF BORDER TO CANADIAN CATTLE

Hon. David Tkachuk: Honourable senators, a week and a half ago, I read to you the names of U.S. senators who supported a resolution on March 3 in the U.S. Senate to keep the border closed to Canadian beef. The following are the U.S. senators who supported Canadian interests and its beef producers: Senators Alexander Lamar, Republican; Wayne Allard, Republican; George Allen, Republican; Robert Bennett, Republican;

Christopher Bond, Republican; Sam Brownback, Republican; Jim Bunning, Republican; Richard Burr, Republican; Lincoln Chafee, Republican; Saxby Chambliss, Republican; Tad Cochran, Republican; Norm Coleman, Republican; Susan Collins, Republican; John Cornyn, Republican; Jim DeMint, Republican; Mike DeWine, Republican; Elizabeth Dole, Republican; Bill Frist, Republican; Lindsey Graham, Republican; Chuck Grassley, Republican; Judd Gregg, Republican; Chuck Hagel, Republican; Orrin Hatch, Republican; Kay Hutchison, Republican; Johnny Isakson, Republican; Jon Kyl, Republican; Trent Lott, Republican; Richard Lugar, Republican; Mel Martinez, Republican; John McCain, Republican; Mitch McConnell, Republican; Lisa Murkowski, Republican; Pat Roberts, Republican; Rick Santorum, Republican; Olympia Snowe, Republican; Arlen Specter, Republican; Ted Stevens, Republican; John Sununu, Republican; James Talent, Republican; David Vitter, Republican; George Voinovich, Republican and John Warner, Republican.

Forty-three Republican senators voted for Canadian interests while four Democrats joined them — Senators Lincoln, Nelson, Pryor and Rockefeller.

Unfortunately, Senators Burns, Coburn, Craig, Crapo, Domenici, Ensign, Enzi, Inhofe, Shelby, Smith, Thomas, Thune and Sessions, shamefully Republicans, voted with the Democrats.

THE LATE METROPOLITAN WASYLY, PRIMATE OF UKRAINIAN ORTHODOX CHURCH OF CANADA, O.C.

Hon. A. Raynell Andreychuk: Honourable senators, I rise today to recognize the significant contribution made to Canada by Metropolitan Wasyly, Primate of the Ukrainian Orthodox Church of Canada, who passed away recently. As a community leader, parish priest and throughout his 20 years as the spiritual head for Ukrainian Orthodox Christians in Canada, Metropolitan Wasyly practised the values of tolerance, service and inclusiveness.

The citizens of Hamilton, where as a parish priest the late Metropolitan served for 29 years, saw firsthand these special qualities. As a father, husband and spiritual adviser, his contribution saw the strengthening not only of the Ukrainian-Canadian community but the larger Hamilton community.

Metropolitan Wasyly provided the temperament and vision to strengthen the church, not only at the parish level, but to facilitate its evolution as a nationally and internationally recognized body on matters of faith and ecumenical cooperation. His work can be seen in the Eucharistic union with the Patriarchate of Constantinople in 1990, through the Canadian Council of Churches, and in his participation in creating the Conference of Orthodox Bishops of Canada and an Orthodox-Roman Catholic dialogue in Canada.

In 1993, he led a delegation to visit Ukraine, and felt it his duty to contribute to the establishment of one recognized local Orthodox Church. He was uplifted to see his ancestral homeland choosing an open and democratic form of society.

Many honours were bestowed on him including honorary doctorates from St. Andrew's College and the Ukrainian Free University in Munich, the Shevchenko Medal from the Ukrainian Canadian Congress and the highest civilian honour this country can bestow, Officer of the Order of Canada.

We remember him for his very special way in contributing to the betterment of our community, and to the larger Canadian society. For this we are thankful for a life well lived. May his memory continue.

[*Translation*]

QUEBEC GAMES

Hon. Jean-Claude Rivest: Honourable senators, Canada is scrutinizing its performance at the Olympics, and rightly so. A review of the Canadian government's policies and approach to our athletes is called for.

One of our pages, David Bosquet of Saint-Hyacinthe, commented to me that people often wondered why Quebecers had for many years been successful in bringing an impressive collection of gold, silver and bronze medals back to Canada, in both winter and summer Olympics. The answer is the Quebec Games. Forty years ago, and I must draw attention to this anniversary, the Quebec Games were begun, bringing together for winter and summer events young people under the age of 18 from various regions to compete in true Olympiad style. As a result, our youth and the entire Quebec community have developed an awareness of the importance of the Olympic movement, with all of its attendant values, as well as of the necessity for young people to be involved in physical education.

• (1820)

This year, Saint-Hyacinthe hosted the finals of the fortieth winter Quebec Games. These games are of importance not only to Quebecers but to all Canadians. I would remind you that most of the Olympic medallists from Quebec in recent years started out winning at the Olympic-style games organized in Quebec. This initiative dovetails very well with the interest that the Canadian people show not only for the Olympic movement, but for physical activity in general.

It is important to congratulate all the organizers, all the volunteers and all the athletes involved in the Quebec Games which were held in Saint-Hyacinthe at the end of February this year, as well as all those who have been involved over the past 40 years in this worthwhile initiative, which has been of such benefit to Quebec and to Canada.

[*English*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in our gallery of Juliana Lynch-Staunton, the wife of Honourable Senator Lynch-Staunton; as well as Connor Lynch-Staunton, Ms. Lynch-Staunton and Senator Lynch-Staunton's grandson.

On behalf of all honourable senators, I bid you both welcome to the Senate of Canada.

ROUTINE PROCEEDINGS

HERITAGE LIGHTHOUSE PROTECTION BILL

REPORT OF COMMITTEE

Hon. Wilbert J. Keon, for Senator Kirby, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Monday, March 21, 2005

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

TENTH REPORT

Your Committee, to which was referred Bill S-14, An Act to protect heritage lighthouses, has, in obedience to the Order of Reference of Tuesday, November 2, 2004, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

WILBERT J. KEON
Deputy Chair

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Forrestall, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

THE SENATE

NOTICE OF MOTION TO EXTEND ADJOURNMENT TIME ON MARCH 23, 2005

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That notwithstanding the Order of the Senate of November 2, 2004, when the Senate sits on Wednesday, March 23, 2005, it continue its proceedings beyond 4 p.m. and follow the normal adjournment procedure according to rule 6(1); and

That committees of the Senate scheduled to meet on Wednesday, March 23, 2005, be authorized to sit even though the Senate may then be sitting and that rule 95(4) be suspended in relation thereto.

NOTICE OF MOTION TO AUTHORIZE COMMITTEES TO MEET DURING ADJOURNMENT OF THE SENATE

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, pursuant to rule 95(3), committees of the Senate scheduled to meet on Thursday, March 24, 2005, be authorized to sit even though the Senate may then be adjourned for a period exceeding one week.

[*Translation*]

CANADA SHIPPING ACT
CANADA SHIPPING ACT, 2001
CANADA NATIONAL MARINE CONSERVATION AREAS ACT
OCEANS ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-3, to amend the Canada Shipping Act, the Canada Shipping Act, 2001, the Canada National Marine Conservation Areas Act and the Oceans Act.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Rompkey, bill placed on the Orders of the Day for second reading two days hence.

[*English*]

INTERNATIONAL DEVELOPMENT ASSISTANCE

NOTICE OF MOTION URGING GOVERNMENT TO MEET COMMITMENT

Hon. A. Raynell Andreychuk: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Senate of Canada calls upon the Government of Canada to establish a specific timetable that will enable Canada to meet its longstanding commitment to provide 0.7 per cent of its Gross National Income as official international development assistance; and

That this Senate of Canada calls upon the Government of Canada to provide funds, within the budgetary process, to achieve this objective at the latest by the year 2015, beginning with an immediate 100 per cent increase in official development assistance in the next fiscal year.

QUESTION PERIOD

CITIZENSHIP AND IMMIGRATION

INTERCEPTION OF FRAUDULENT DOCUMENTS

Hon. A. Raynell Andreychuk: Honourable senators, on March 16, 2005, *The Globe and Mail* reported that fake identity documents are flooding into Canada, taking the form of:

> Fake passports hidden inside books, fraudulent identity documents tucked inside Christmas cards and blank letterhead that could be used to misrepresent educational qualifications...

A Citizenship and Immigration Canada document obtained by Vancouver immigration lawyer Richard Kurland through an access to information request shows that between 1995 and 2000 more than 4,000 pieces of mail and courier packages were seized and that a huge number of fake documents, mostly from China, were recovered.

Does the government have an estimate of the number of fake documents that are not being intercepted and are making their way into the hands of fraudulent claimants? In other words, is the government tracking this issue?

Hon. Jack Austin (Leader of the Government): Honourable senators, I will make inquiries and provide a delayed answer.

Senator Andreychuk: Further, is the government aware that there is an increasing number of fraudulent identity documents being used in this manner, and what corrective measures has it taken?

Senator Austin: Honourable senators, I will add that information to the delayed answer.

• (1830)

THE ENVIRONMENT

KYOTO PROTOCOL— GREENHOUSE GAS ABATEMENT STRATEGY

Hon. Donald H. Oliver: Honourable senators, last week's media reports indicated that the federal government has been warned that the cost to meet its Kyoto targets could exceed $10 billion and that the necessary emissions reductions could be 30 to 60 megatons higher than initially forecast.

Could the Leader of the Government in the Senate please explain to honourable senators the implications of these new figures and what effect they will have on the government's greenhouse gas abatement strategy?

Hon. Jack Austin (Leader of the Government): Honourable senators, the government will announce its Kyoto plan to deal with its international obligations which were entered into by Prime Minister Mulroney and detailed by the government of Prime Minister Chrétien. In the meantime, I would be most interested if Senator Oliver would tell of his own position with respect to Kyoto.

Senator Oliver: I was wondering if the leader could answer the question and indicate when we will know the government's position. When will he table it?

Senator Austin: It would be very helpful to know the official opposition's position, but in any event, we will present the Kyoto plan in this session, prior to June of this year.

Senator Oliver: Last week, the federal government indicated that it will move shortly to impose regulations to force heavy industries to cut their greenhouse gas emissions. Federal Environment Minister Stéphane Dion stated that the regulations will be imposed without further consultation, and they will not be up for negotiation.

Alberta Premier Ralph Klein, in response to Minister Dion, said that companies in Alberta are interested in reducing greenhouse gas emissions, that they are using best efforts to bring down those emissions, but that to come out with statements that are overbearing serves no useful political purpose.

Alberta's Energy Minister Greg Melchin also said that Albertans were told that they would be partners with the federal government and that they hope they will not be silent partners in the discussions on this issue.

My question for the Leader of the Government in the Senate is, as this issue touches on the very delicate matter of federal-provincial relations, what response can he give to the concerns raised by the Government of Alberta with respect to the unilateralist tone of Minister Dion's remarks?

Senator Austin: Honourable senators, I do not agree that Minister Dion is either speaking or behaving in a unilateral fashion. Extensive consultations have gone on, and are going on, with respect to the provinces and other interest groups including the automobile industry.

It is the view of the government that meeting Kyoto targets and having a thriving auto industry are not mutually exclusive ambitions. However, with respect to the interests of the Province of Alberta, the government remains firm in seeking a 25 per cent improvement in auto efficiency by 2010.

HEALTH

MEETING WITH UNITED STATES SECRETARY OF HEALTH AND HUMAN SERVICES— SALE OF PRESCRIPTION DRUGS— HANDLING OF COX-2 INHIBITORS

Hon. Wilbert J. Keon: My question is for the Leader of the Government and is regarding the meeting between the U.S. Health Secretary and our Minister of Health.

Last week, as honourable senators know, a meeting occurred between our Minister of Health and the Health and Human Services Secretary of the United States, Mr. Michael Leavitt. One issue discussed at the meeting concerns Internet sales of Canadian prescription drugs to American consumers. The Health Minister says that his American counterpart did not put any pressure on him to stop this practice, but he has not revealed their exchange in detail.

Does the Prime Minister's Office expect that this issue will be discussed when the Prime Minister meets with the President this week?

Hon. Jack Austin (Leader of the Government): Honourable senators, I am not in possession of that information.

Senator Keon: Honourable senators, prior to the meeting, our health minister said he intended to raise the issue of reforming the drug regulation system with his American counterpart. Since the controversy surrounding the arthritis drug Vioxx began last fall, the health minister has promised to change Health Canada's drug approval and monitoring process.

Both the U.S. Food and Drug Administration and Health Canada have been criticized for their handling of Vioxx and other Cox-2 inhibitor drugs. Could the Leader of the Government in the Senate also inquire about results of this particular dialogue between the health ministers?

Senator Austin: I will make those inquiries and reply in the form of a delayed answer.

[*Translation*]

FINANCE

BUDGET— INCREASE IN FOREIGN CAPITAL INVESTMENT

Hon. Madeleine Plamondon: Honourable senators, the budget recently adopted in the House of Commons included a measure that worries me a great deal. It was a measure that would allow Canadian pension fund administrators, benefiting from tax advantages for the Canadian taxpayer, to invest all of the funds outside Canada.

Can the Leader of the Government tell us what studies were used as a basis for implementing a measure that imposes such radical changes, increasing the foreign investment of Canadians' savings from 30 per cent to 100 per cent?

[*English*]

Hon. Jack Austin (Leader of the Government): I wonder if Senator Plamondon is inquiring with respect to investments made for pension purposes outside of Canada.

[*Translation*]

Senator Plamondon: As a member of the Standing Senate Committee on Banking, Trade and Commerce, I can tell you that, a few years ago, the decision was made to increase the foreign investment limit from 20 per cent to 30 per cent, whereas now it is going from 30 per cent to 100 per cent. Could American companies in Canada, for example, decide to invest pension funds in the United States and as a result, we would no longer have control over Canadians' savings?

[*English*]

Senator Austin: Honourable senators, I can only repeat what the Minister of Finance has said in his budget statements, and I would be very happy to draw to the attention of Senator Plamondon those aspects that respond to her question.

[*Translation*]

Senator Plamondon: Are there documents justifying such a change? Were any studies conducted? Will this matter be referred to the Standing Senate Committee on Banking, Trade and Commerce for its consideration? Could you table the documents justifying such a decision?

[*English*]

Senator Austin: Honourable senators, the budget implementation bill will be brought before the other place, and after due consideration, I presume that Senator Plamondon will be able to inquire of officials in the Department of Finance or of the Minister of Finance with respect to the basis on which that decision was taken by the Minister of Finance.

[*Translation*]

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I have the honour to table three delayed answers. The first is in response to a question raised in the Senate on December 13, 2004, by Senator Prud'homme concerning the members of the delegation accompanying the Prime Minister to Libya.

[*English*]

I have a second delayed answer to a question raised in the Senate on February 15, 2005, by Senator Angus regarding the Canada Pension Plan influence on investment markets and a final delayed answer to an oral question raised in the Senate on March 10, 2005, by Senator Kinsella regarding ballistic missile defence.

FOREIGN AFFAIRS

LIBYA—VISIT BY PRIME MINISTER— MEMBERS OF DELEGATION

(Response to question raised by Hon. Marcel Prud'homme on December 13, 2004)

As honourable senators are aware, Prime Minister Paul Martin visited Tripoli, Libya on December 19 and 20, 2004, on the one year anniversary of Libya's decision to end its weapons of mass destruction development program and provide full access to the country by the relevant international inspection bodies. He was the first Canadian Prime Minister to visit Libya.

The Honourable Pierre Pettigrew, Minister of Foreign Affairs, Dan McTeague, Yasmin Ratansi, and Paul Szabo, from the Liberal Party of Canada, Kevin Sorenson, from the Conservative Party, and Michel Guimond, from the Bloc Québécois, comprised the six parliamentarian delegation that accompanied the Prime Minister.

FINANCE

CANADA PENSION PLAN— INFLUENCE ON INVESTMENT MARKET

(Response to question raised by Hon. W. David Angus on February 15, 2005)

- Budget 2005 announced the elimination of the application of the foreign property rule to all Canadian pension plans, including the Canada Pension Plan Investment Board (CPPIB), as well as Registered Retirement Savings Plans and Registered Retirement Income Funds. Once the budget implementation bill receives Royal Assent, the CPPIB will no longer have to invest 70 per cent of its assets in Canadian securities. This should allay concerns that the CPPIB might become too dominant in Canada's markets in the future.

- The CPPIB cannot become a majority shareholder of any Canadian company. As with other pension funds subject to federal legislation, the CPPIB cannot hold more than 30 per cent of the common shares of any single corporation.

- Moreover, even with a 30 per cent foreign property limit, projections of the CPPIB's growth and that of Canada's equity markets do not suggest that the CPPIB could ever become a significant shareholder in large Canadian companies. According to the latest report of the Chief Actuary, the assets of the CPPIB are projected to grow from $77 billion today to $322 billion by 2020. Assuming that Canada's equity markets grow by a modest 5 per cent per year over this period, the CPPIB's share of the domestic equity market would increase from 1 per cent to only 3 per cent.

- As regards to the appointment of directors to the CPPIB, a rigorous merit-based selection process is set out in legislation to ensure that the members of the board have the requisite experience to oversee the corporation and are independent of governments. The process is as follows:

  - A federal-provincial nominating committee, comprised of one member from each participating province and the Government of Canada, identifies qualified candidates for the board with the aid of an executive search firm.

  - The nominating committee submits a short list of candidates to the Minister of Finance for consideration.

  - The Minister of Finance consults with participating provinces prior to making a recommendation to Governor-in-Council on director appointments.

- This process is consistent with the merit-based appointment process for Crown corporations announced by the Government of Canada in March 2004.

CANADA-UNITED STATES RELATIONS

MISSILE DEFENCE PROGRAM— DOCUMENTATION ON PROPOSAL

(Response to question raised by Hon. Noël A. Kinsella on March 10, 2005)

As you are well aware, the government has informed the United States that we will not be joining them in their missile defence system. This decision was made based on an assessment of Canada's national interests and priorities.

We accept that in the face of ongoing proliferation, defensive measures can be a prudent complement to non-proliferation, arms control and disarmament efforts. The decision not to participate should not be taken as criticism of the United States. The United States has weighed the anticipated danger to its citizens and territory against available resources, and has decided to proceed with deployment of a missile defence system. We respect and understand the decision of the United States to take measures it considers essential to ensure its security.

This was why last August we agreed to amend the NORAD Agreement to allow the US missile defence commands access to NORAD's long standing missile warning function.

However, like the United States, Canada made its own decision on this issue based on our national interests and priorities. The government will focus on other defence and security priorities. The government has a responsibility to determine where the most pressing and immediate threats lie, and must decide which investments will bring the greatest tangible results.

With this in mind, we are continuing to strengthen our cooperation with the United States in other aspects of the defence of North America, including border and maritime security.

The government recently announced a significant boost to funding of nearly $13 billion over 5 years for the Canadian Forces. This delivers on the commitment to expand the Canadian Forces by 5,000 additional troops and 3,000 new reserves. This will significantly enhance Canada's military capabilities, and enable them to engage overseas more effectively in support of our foreign policy goals. The new funding is a mark of our determination to transform the Canadian Forces, so that they are better structured to respond to the new asymmetric threat environment, at home and abroad. Furthermore, the government also made a commitment of $500 million over the next five years to address global peace and security.

We will continue our efforts to enhance the protection of North America, as set out in the New Partnership Statement that President Bush and Prime Minister Martin announced on November 30. We have allocated more than $400 million to border security and we will work closely to build on the

success of Smart Borders, and engage Mexico to strengthen our defence and security framework so that we better align our roles, priorities and interests. The upcoming meeting between the Prime Minister and the United States will address exactly such issues.

We continue to be concerned about the proliferation of weapons of mass destruction and their means of delivery. But our preferred approach to the missile threat is prevention. Through diplomatic engagement and non-proliferation, arms control and disarmament efforts we are seeking to reduce or eliminate this threat. We are working to increase the understanding of and the adherence to the principles of the Missile Technology Control Regime, as well as to strengthen international safeguards and verification. Canada has also been leading efforts at the UN Conference on Disarmament to launch talks, without any preconditions, on how the international community can keep outer space weapons-free.

Canada remains a committed partner with the United States on security — whether on our continent through NORAD and the Smart Borders program, or internationally in Afghanistan, Haiti, Iraq and the Middle East.

• (1840)

ANTI-TERRORISM ACT

BUDGET—
REPORT OF SPECIAL COMMITTEE PRESENTED

Leave having been given to revert to Presentation of Reports of Standing or Special Committees:

Hon. Joyce Fairbairn, Chair of the Special Senate Committee on the Anti-terrorism Act, presented the following report:

Monday, March 21, 2005

The Special Senate Committee on the Anti-terrorism Act has the honour to present its

SECOND REPORT

Your Committee, which was authorized by the Senate on Monday, December 13, 2004 to undertake a comprehensive review of the provisions and operation of the *Anti-terrorism Act, (S.C. 2001, c.41),* respectfully requests the approval of funds for fiscal year 2005-2006.

Pursuant to Chapter 3:06, section 2(1)(c) of the *Senate Administrative Rules,* the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

JOYCE FAIRBAIRN
Chair

(*For text of budget, see today's* Journals of the Senate, *Appendix, p. 597.*)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Fairbairn, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I would ask that we call the bills under Government Business in the following order: Bill C-39, the health accord; Bill C-20, First Nations Fiscal Management; Bill S-18, Statistics; Bill C-6, Public Safety; Bill C-8, Public Service; and Bill C-33, budget implementation.

TAX CONVENTIONS IMPLEMENTATION BILL, 2004

MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill S-17, to implement an agreement, conventions and protocols concluded between Canada and Gabon, Ireland, Armenia, Oman and Azerbaijan for the avoidance of double taxation and the prevention of fiscal evasion, and acquainting the Senate that the Commons had passed this bill, without amendment.

FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS ACT

BILL TO AMEND—THIRD READING—
DEBATE ADJOURNED

Hon. Sharon Carstairs moved third reading of Bill C-39, to amend the Federal-Provincial Fiscal Arrangements Act and to enact An Act respecting the provision of funding for diagnostic and medical equipment.

She said: Honourable senators, I thank the members of the Standing Senate Committee on Social Affairs, Science and Technology, ably chaired in this instance by Senator Keon, for dealing with this bill. We had a number of officials from both the Department of Finance and the Department of Health.

I want to put on the record that clearly the major concerns that were raised by Senator Keon, despite his strong support for this bill, remain the concerns that we have with respect to this bill, that is, whether this infusion of cash will bring about the transformative change within the delivery of health care in Canada that we all know is so very necessary.

We all understand the constitutional relationships on the matter of health. We all know the limitations upon the federal government in the imposition of clear accountability. However, there is a genuine desire on the part of all senators connected with health care to see that transformative change take place. We

recognize the need to make a genuine movement towards primary care, and we need to see more process with respect to the construction of long-term, personal care beds so acute care beds are not being used by those who would be better placed elsewhere. We recognize the need for a fundamental move to home care and, from my perspective, of course, for better delivery of palliative end-of-life care.

Honourable senators, I put my faith in the review that is to be conducted by Parliament in 2008 and in 2011. That will be done, I would presume, by the Standing Senate Committee on Social Affairs, Science and Technology because there is no more knowledgeable group of parliamentarians with respect to the future of health care than those parliamentarians who sit on that committee on behalf of this chamber. I know that if the kind of changes that are envisaged do not occur, it will be the Social Affairs Committee of the Senate of Canada that will put the feet to the fire.

On motion of Senator Keon, debate adjourned.

FIRST NATIONS FISCAL AND STATISTICAL MANAGEMENT BILL

THIRD READING

Hon. Ross Fitzpatrick moved third reading of Bill C-20, to provide for real property taxation powers of first nations, to create a First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority and First Nations Statistical Institute and to make consequential amendments to other Acts.

He said: Honourable senators, I am pleased tonight to be able to speak at third reading of Bill C-20, the First Nations Fiscal and Statistical Management Act, because this legislation, initiated and championed by First Nation leaders, will enable First Nations to take greater control of social and economic development in their communities.

Bill C-20 will provide participating First Nations communities with many of the fiscal and statistical tools long used by local governments to finance infrastructure, foster economic development and improve quality of life.

Honourable senators, Manny Jules, a former chief of the Kamloops First Nation, was a principal architect of this legislation. He summed up the root causes of economic isolation very eloquently when he said:

> Today, a wall surrounds First Nation economies. It is a wall of mistrust and dependency that traps us in our own poverty. Each additional year of dependency is another brick in this wall. This wall has not served Canada well. It has prevented us from participating in the economy.

I am pleased to say that Bill C-20 will enable First Nations communities to dismantle the wall to which Manny Jules referred. The approach to development articulated in the legislation before us today was designed, tested and refined by First Nations leaders.

The legislation proposes to establish three institutions with the needed mandates and legal status to support effective property tax and bond financing regimes for First Nations. The First Nations Tax Commission will help participating First Nations implement fair and transparent property tax regimes that balance the interests of taxpayers and the community. The net result of these actions will be a secure and stable fiscal environment.

The proposed First Nations Finance Authority would provide participating First Nations that meet strict requirements with the access to private capital currently available to other governments. The result is that the cost to First Nations of long-term borrowing could be reduced by 30 to 50 per cent, and it is expected that up to $125 million of private capital could be raised over the first five bond issues.

To ensure that the property tax and bond regimes thrive over the long term and to provide investors with much needed certainty as to the financial health of First Nations, Bill C-20 will establish the First Nations Financial Management Board. The board will certify First Nations financial management systems, practices and standards, thus safeguarding the interests of borrowers and investors alike.

Honourable senators, the fourth institution proposed in Bill C-20 will provide another element vital to the success of any government: accurate and relevant information. The Statistical Institute will ensure that community leaders have access to the relevant data and analysis that they need to make sound decisions that serve the interests of their communities.

Together, the four independent yet complementary institutions established under Bill C-20 would give First Nations communities an opportunity to exercise more control and derive greater benefit from economic development.

Some opponents to Bill C-20 have raised concerns about the constitutionality of the bill, fearing that it will affect their Aboriginal and treaty rights. This could not be further from the truth. The preamble of the bill makes it clear that nothing in the bill affects the ability of any First Nation to negotiate self-government in accordance with the terms of the government's inherent right policy. The bill also contains a non-derogation clause which further protects Aboriginal and treaty rights.

• (1850)

Honourable senators, I support this legislation for three primary reasons. First, it will help close considerable gaps that continue to exist between First Nations and other communities in Canada. Second, Bill C-20 is First Nation-led. The development of this bill has been guided by the vision, determination, skills and personal commitment of First Nation leaders, along with input from industry specialists. Third, Bill C-20 is optional. The bill recognizes that First Nations have great diversity of goals and aspirations and that they may see different paths to attaining these goals.

Honourable senators, Bill C-20 is good legislation, and I urge you to join with me in supporting it.

[*Translation*]

Hon. Terry Stratton (Deputy Leader of the Opposition): Honourable senators, I wish to speak at this third reading stage of Bill C-20. This is a long-awaited measure and likely the most important bill relating to Aboriginal peoples that has been introduced in Parliament in the past five years.

[*English*]

Bill C-20 is the result of the evolution in thinking and law-making that arose out of the actions taken by the Mulroney Conservative government in the mid-1980s. Bill C-20 builds on those Conservative principles and legislative actions empowering First Nations to achieve greater economic self-sufficiency and political autonomy. Bill C-20 allows First Nations to create hope for their people. It empowers First Nations by enhancing their fundraising capacity, through taxation of leasehold interests on reserve lands, to pool their resources and borrow at lower interest rates so they can build roads, water and sewer services and other infrastructure projects, which experience in non-Native communities has shown will lead to outside interests investing in their communities.

Honourable senators must recognize that this bill and this idea were brought forward by the Aboriginal communities themselves. We must give them full credit for this initiative.

The fiscal institutes provide for real property tax bylaw approval processes, establishment of financial standards and issuance of bonds to raise long-term private capital at preferred rates. The appointed boards are to be constituted with a majority of credible and qualified First Nations directors.

Bill C-20 is all about making First Nations part of the Canadian economy. The concept and the legislative proposals have been discussed six times at the Assembly of First Nations. The bill will stop First Nation taxation revenues from going to municipalities, provinces and the federal government. First Nations will be able to plan for their future and move forward at their own pace.

The bill will create systems and institutions that will enable self-government. Until Parliament establishes self-government legislation and an institute to assist First Nations in becoming self-governing, Bill C-20 will go some distance toward rectifying the situation by bringing fiscal resources to the table. First Nations cannot be self-governing if they cannot be fiscally self-reliant.

Bill C-20 allows First Nations to invest their revenues in a manner akin to other governing bodies. It gives First Nations government revenue. The problem with the Indian Act is the fiduciary aspect. First Nations must wait for others to make a decision and transfer meagre resources. As one chief recently put it, "Typically what the government does is give us $10 to do $100 worth of work."

The alternative to these institutes is the status quo. This cost of doing nothing is too high. No land is mortgaged with this system. Generally First Nation communities use money derived from taxing leasehold interests on reserve lands to finance programs and services not provided by Canada. As a matter of policy, where there are non-Native leaseholders on reserve, the government does not pay for infrastructure development. Bill C-20 is a vast improvement over the government's earlier versions of this bill.

Previously, the enabling aspect to opt in was simply not there. Now, First Nations communities wanting to put taxation measures in place are given the choice of whether to do so under the Indian Act or the more comprehensive scheme of Bill C-20.

While the fiscal institutes will be fully optional, the First Nations Statistical Institute will be able to carry out its work functions with all the First Nations communities, including the majority that are not involved with the fiscal institutes.

Even though non-scheduled bands will not benefit from a statutory entitlement to avail themselves of the advisory or counselling services and functions of the institutions created by Bill C-20, officials did say in response to senators' questions that equivalent parallel services would remain available on a non-statutory basis to non-participating communities through Indian Affairs and Northern Development and other agencies. Put simply, the minister would sign a contract with the institutes to provide services to these bands. That said, some First Nations communities remain concerned that the department may pressure them to opt in to gain access to major capital project financing.

It is true that support for the legislation has been uneven across the country. This is largely because about only 110 First Nations collect property tax today, and these groups are located mostly in British Columbia and Alberta. I suspect that will change in time.

The Standing Senate Committee on Aboriginal Peoples has determined that the deficiencies raised during examination of the bill did not warrant rejection or amendment. The committee did, however, preface their clause-by-clause review by putting on the record a summary of the principal concerns raised in testimony. The first concern was about the optional nature of each of the proposed institutes. The committee was reassured that all elements of Bill C-20 are optional. The second concern was that there should be a referendum process instead of a simple band resolution to opt in. The committee acknowledged that business decisions cannot always wait for referendum. Some First Nations expressed apprehension that the bill will undermine rights and certain benefits that First Nations now have, benefits that flow from the Indian Act and general fiduciary programming of the federal government. To counter this possibility, a non-derogation clause has been added in clause 3.

There was a desire to take the statistical institute out of Bill C-20 and put it in a stand-alone bill. Officials for the statistical institute informed the committee that the provision of any new information is optional, that the level of protection is greater today, that section 147 and section 152 regarding privacy have been amended and that this institute would be scheduled in the Privacy Act.

The committee has satisfied itself that these matters will not jeopardize First Nations whether or not they choose to opt in.

The committee believes that the benefits seem to outweigh any unintended and unforeseen consequences and, of course, the statute will be reviewed within seven years, thus providing sufficient time to correct any arising deficiencies. Expert witnesses expressed the hope to have a review within three years.

The Aboriginal communities that come under this legislation need to know that they are getting good value, so when the mandated review is undertaken it might be prudent to seek the Auditor General's input.

Honourable senators, with respect to examination and consultation, there have been four Senate Aboriginal Peoples Committee hearings on the bill and the legislation has been considered three times in the other place. While approximately 50 bands do not support the bill, over 100 bands do. Many others are not yet in a position to take advantage of it, and others will simply choose not to opt in. There have been years of consultation and debate in the public forum involving the Assembly of First Nations, the B.C. First Nations Summit, the Union of Ontario Indians, the Atlantic Policy Congress, numerous individual First Nations and non-Aboriginal governments. Private sector companies and the Canadian Property Taxpayers Association are in favour of Bill C-20.

I believe, honourable senators, that the Senate should also support Bill C-20. In doing so, the Senate continues the work begun as established by the government policies set out during the 1980s. The Senate recognizes and affirms the evolutionary process of self-determination, self-sufficiency and self-governance.

• (1900)

The right of Aboriginal peoples to self-direction requires that they control internal matters that are necessary for the survival and functioning of a collective entity and that they control the manner in which their society adapts to external influences.

In a news release of March 14, 2005, the federal government said that communities are engines for economic growth and the key to Canada's ability to compete effectively in the 21st century, and that the government must be committed to help communities compete for investment from around the world.

Investments help communities achieve their potential, ensure their viability and improve quality of life for Aboriginal people in Canada.

Honourable senators have heard the references of Senator St. Germain to the Harvard Project and the three critical ingredients necessary for First Nations to produce sustainable productive economies. When these three elements of jurisdiction, capable governance and culturally appropriate institutions are working together, the chances of development appear to increase dramatically. When these are in place, the other assets such as education, natural resources, access to capital and the community's location begin to pay off. Where those things are not in place, those assets are likely to be wasted.

Bill C-20 provides another asset for First Nations to create their own sustainable and productive economies. The proposed legislation is not a cure-all for the problems that face First Nations, nor will it be a viable option for many First Nations; however, it can be a better alternative to the status quo, allowing several First Nations to achieve a better quality of life.

Honourable senators, we must stand for prudence and progress. We must not stand for the status quo. Let us be lawmakers who support economic and social progress for Canada's First Nations citizens.

Some Hon. Senators: Hear, hear!

The Hon. the Speaker: Are honourable senators ready for the question?

Some Hon. Senators: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read third time and passed.

STATISTICS ACT

BILL TO AMEND—THIRD READING—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Rompkey, P.C., seconded by the Honourable Senator Losier-Cool, for the third reading of Bill S-18, to amend the Statistics Act;
>
> And on the motion in amendment of the Honourable Senator Comeau, seconded by the Honourable Senator Cochrane, that Bill S-18 be not now read a third time but that it be amended in clause 1, on page 1, by replacing line 8, with the following:
>
> "between 1910 and 1918 is no longer subject to".

Hon. Lorna Milne: Honourable senators, I wish to take a very brief moment to say a few words about Bill S-18 and the amendment that was proposed by Senator Comeau. I apologize for the fact that I was not in the chamber when third reading debate began, but I was in Alberta with the Energy Committee at the time.

Honourable senators have heard from me on this subject on previous occasions. This is an issue that is dear to me and I will not go into great length again as to why.

My firm belief is that the historic census records are a vital part of Canada's history. They are the only record of all Canadians in their family groups. As such, they are critical to historians.

The amendment of Senator Comeau would prevent the government from releasing records for every census taken between 1918 and 2005. He is of the opinion that a promise was given to Canadians that their census information would be kept private for all time. This specific issue has been thoroughly studied. The government is confident that this bill does not breach any promise given to Canadians.

The government appointed former Supreme Court Justice Gérard La Forest, a noted privacy advocate, to lead an expert panel that studied this issue. The panel found that no promise of the kind that Senator Comeau referred to had ever been made. The Standing Senate Committee on Social Affairs, Science and Technology has also studied opinions from the Department of Justice that confirmed this view.

Finally, regulations have the force of law and the regulations governing the censuses have repeatedly stated that individual census returns would become part of the public record. The regulations specifically state that the records would be "stored in the archives of the Dominion." Canadians well know that all material that is stored in our archives eventually becomes public, even cabinet documents.

Honourable senators, given the importance of these documents to the historical and genealogical community, and given the report of the expert panel on this issue, I urge you to defeat the amendment and to pass the bill.

Hon. John Lynch-Staunton: Would the honourable senator allow a question or two?

Senator Milne: Certainly.

Senator Lynch-Staunton: Honourable senators, there is only one aspect of this bill that I find attractive and that I will support as long as the answers to my questions are reassuring and that is what is known as the opt-in clause; that is, on future census forms, there will be a section, sentence or part of a form to the effect that if the individual filling out the form wants the information to be made public after a certain period of time, the individual must so indicate. If there is no indication, that information remains secret forever.

How that request be formulated? Will it be straightforward: "I agree that this information can be made public after 92 years," or will there be editorial comment as to the advantages or disadvantages of having that information released?

Senator Milne: I must tell the honourable senator that I do not have anything to do with drawing up the census form, so I am not sure what the final form will be. I have been told that there will be a box that can be ticked. If an individual does not fill in the box, the census information will never be released. If the individual fills in "no," the census information will never be released.

I am trying to remember what the census form looks like. I do not think there is too much by way of explanatory note. As this is a new question for our Canadian census forms, Dr. Ivan Fellegi intends to try to do a certain amount of public information in advance, but I do not think that information will be on the form. That is the best answer I can give.

Senator Lynch-Staunton: Unlike negative billing, you will have to indicate. If you do not indicate, then nothing happens.

I am referring to the last bulletin of the Canadian Historical Association, volume 31.1.2005, in which a press release dated November 2, 2004 says:

> Statistics Canada, in conjunction with Library and Archives Canada will, as part of the 2006 census public communications campaign, encourage Canadians to allow future access to their census records to preserve Canada's history for future generations.

I am sorry I could not attend the committee meeting, but some of us have problems being at several committees at the same time. I was sorry to see that this subject was not brought up during the committee meeting.

• (1910)

I read here that the Government of Canada will encourage people to indicate a preference in favour of releasing the information. Those who are against that release will not have the same opportunity.

Certainly, it was not the intent of Parliament that, by voting for this bill, which is strictly a choice made by an individual, that choice can be influenced by Statistics Canada in conjunction with Library and Archives Canada as part of the census process to release the information.

I would like to ask Senator Milne, as a strong supporter of this bill, whether she agrees that this strategy is in line with the intent of the bill, which is to give an independent, uninfluenced choice to the individual who is filling out the form.

Senator Milne: It is my understanding that the campaign beforehand will be to educate Canadians as to what it means if they say no and what it means if they say yes, so they will have that choice.

Senator Lynch-Staunton: I intend to speak to this in due course. I will quote more fully from this press release, but the trouble is that it does not suggest that the government will explain the alternatives. It will:

> ...as part of the 2006 Census public communications campaign, encourage Canadians to allow future access to their census records to preserve Canada's history for future generations.

There is nothing saying that the disadvantage of doing that is that you may be releasing information asked for on the long form that you would rather not have released.

The government is saying in this press release of last November that it will do all it can to convince Canadians to have the information released, which I find highly irregular. I would like Senator Milne to look into this matter. I hope she would agree that this is not the way government should operate.

I am reminded of the Minister of Immigration who, when asked some time ago why the immigration appeal boards had not been created after the law had been amended allowing them, said that that was just an indication of Parliament, just a wish list to which he was not bound. There was no deadline; therefore, he might not do it.

I fear that we are repeating the same thing here by saying this bill provides that you have the choice but the government is telling us we will ensure the choice is to our liking. Does Senator Milne agree with that process?

Senator Milne: Since I have not seen the publication that Senator Lynch-Staunton is reading, and since it does not appear to be a government publication, I cannot tell what the government will do in the future from a third-hand account.

Senator Lynch-Staunton: The publication is the Canadian Historical Association Bulletin, which quotes a press release from Industry Canada on behalf of Statistics Canada. However, I will be glad to quote fully from that press release and from other documentation to try to convince senators we are going down the wrong path. In the meantime, I move adjournment of the debate.

Hon. Jack Austin (Leader of the Government): Might I inquire of Senator Lynch-Staunton when he intends to make his contribution?

Senator Lynch-Staunton: As soon as I can, honourable senators.

On motion of Senator Lynch-Staunton, debate adjourned.

DEPARTMENT OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS BILL

THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Banks, seconded by the Honourable Senator Ferretti Barth, for the third reading of Bill C-6, to establish the Department of Public Safety and Emergency Preparedness and to amend or repeal certain Acts.

Hon. Anne C. Cools: I rise to speak to third reading of Bill C-6, to establish a department of emergency preparedness and to amend or repeal certain acts.

Honourable senators, I spoke at second reading on December 7, 2004, and I asserted quite strongly that the Public Service Rearrangement and Transfer of Duties Act does not permit the government to jettison or to distort the ancient law office of the Crown known as the Solicitor General, and I stick by that position today.

That public service act which allowed the enactment of the Orders-in-Council that established this department over a year ago was intended to be used for transferring the duties of portions of the public service from one department to another. I contend the law officer of the Crown, the Solicitor General, is no portion of the public service.

Honourable senators, some claim that the concept of the Minister of Public Safety was drawn from the report of the Standing Senate Committee on National Security and Defence. This Senate committee's report of October 2003 was entitled *Canada's Coastlines: The Longest Under-Defended Border in the World*. This report proposed a reorganization of the structures of national security. It proposed a rethinking of national security. However, there is nothing in the report that recommended the abolition of the officer, the Solicitor General of Canada. In fact, a reading of the report reveals the opposite. It reveals that the report proposed a strengthening of the office of Solicitor General.

Recommendation 5.4 at page 157 of the report recommended that:

> This new national security structure containing the following be set up within 60 days: A permanent cabinet committee chaired by the Deputy Prime Minister. The cabinet committee would include the following ministers: Foreign Affairs, Defence, Solicitor General, Health, Finance, Justice, Immigration and others as required.

Further, the committee report at page 124 under the section entitled "Put a Strong Hand on the Tiller" stated:

> Security analysts who appeared before the Committee offered various suggestions as to how a National Maritime Security Policy could best be developed and managed. It was proposed that a separate department for security be created, that a parliamentary committee take charge or that a cabinet committee of ministers with some responsibility for defending our borders (such as the defence minister, the solicitor general, and the minister for national revenue) take the helm.

The committee's report talked about the Solicitor General taking the helm.

Honourable senators, I want to be clear that there is nothing in that report that could be relied upon to jettison the officer, the Solicitor General. As a matter of fact, I contend that the report did not contemplate and did not countenance the possibility of the abolition of the law officer of the Crown, the Solicitor General.

On February 15 last, Anne McLellan, the Minister of Public Safety and Security, appeared before the Senate National Security and Defence Committee. Her appearance was brief and most of her time was spent on other national security issues. Very little of the minister's time was spent on Bill C-6 itself.

Honourable senators will note that all refer to Anne McLellan as the Minister of Public Safety, yet on December 12, 2003, when she was sworn in, she was sworn in as the Solicitor General of Canada, and that is the power that is fuelling the engine she is running. The *Canada Gazette* of January 3, 2004, described her appointment as follows:

> McLellan, the Hon./L'hon. Anne, P.C./C.P.
>
> Solicitor General of Canada to be styled Deputy Prime Minister
>
> and Minister of Public Safety and Emergency Preparedness...

That is very irregular and improper.

On February 15 last in the Senate committee, I asked the minister whether or not she could have achieved all the desired goals of reorganizing national security and creating this new ministry without jettisoning the position of the officer that is the Solicitor General. The Americans created their department and Secretary of Homeland Security without touching any of these ancient law officers of the Crown because they understood the historical importance of the role of these two officers in the administration and the operation of justice.

It is obvious that the concerns of Senator Kenny, the committee and the country regarding the reorganization of national security could have been met without assaulting the ancient law officer called the Solicitor General.

• (1920)

I have already noted that the Senate committee's report did not recommend or contemplate the abolition of the Solicitor General. The minister did not even attempt to answer my questions on these important constitutional questions. She responded as follows:

> I can say a few things and then, Mr. Chairman, if it is okay, I would ask Mr. Pentney, who is a lawyer with the Department of Justice and my department, we have in fact researched this issue in some detail as you might imagine because we did read the record and we knew that the issue would be raised, and Mr. Pentney will give you a more detailed response in terms of the abolition, if you like, of the position of the Solicitor General and the creation of this new department and new minister.

She further added:

> Therefore I would hope that the committee will agree that there is absolutely no constitutional impediment to the creation of a Minister of Public Safety and Emergency Preparedness and the doing away of the position of the Solicitor General. Mr. Pentney can take you through much more of that history if you would like to hear that.

Honourable senators, clearly the minister does not understand the issue and does not have a handle on the issues, particularly the constitutional questions that surround the office of the Solicitor General. This seems to be consistent with this government time and time again. Government ministers will not or cannot explain or defend their bills before committee and make no attempt to explain. Senators attend committee meetings to debate with ministers, not their staff. It is tiring and tedious that again and again and again ministers can tell you very little about the bills that are before them. The minister had a duty to explain this monumental change in Bill C-6. It became very clear during her appearance before the Senate committee that the business of abolishing the position of Solicitor General, the officer, was clearly not the minister's initiative but a departmental initiative. It became clear that the impetus to abolish it came not from the minister but from the Department of Justice. I wonder if she even knew about it. Considering this government's action, particularly on the sponsorship scandal, it seems to be that ministerial ignorance on the important questions has become rampant.

Mr. Pentney, the Assistant Deputy Attorney General from the Department of Justice, assumed the role of explaining to the Senate committee that which properly should have been explained by the minister. Mr. Pentney's testimony was woefully inadequate, most self-indulgent and very self-serving. Essentially, he told us that the law is what he says it is. In other words, the reason is his own conclusion. His own conclusion is the reason. Mr. Pentney's assertions, though not supported by constitutional authority, is reason enough. Take his word for it. He says so; therefore it is so. His assertion should be enough for the committee. Senators have no need of anything other than his own creation, his own assertion, a fabrication of his own mind, in actual fact his own will.

I responded to Mr. Pentney, saying:

> ... you have come to a conclusion that there is no constitutional impediment. You have cited a ... limited history, but you have not given me any analysis, nor have you given me any constitutional authority as to why you could put this Bill before us in this form.... someone in the department adopted a conclusion that it is only a name and it can be changed, ...
>
> However, you have not given us a constitutional authority that says it can be changed.

I continued. I asked Mr. Pentney:

> What is the constitutional authority for this government to bring a bill before us which purports to alter the nature and the character and the name of Her Majesty's Law Officer?

He answered that:

> ... The Constitution in our submission contains nothing which prevents or limits the government's ability to change the title of that office or to assign other roles or responsibilities to that office.

Clearly Mr. Pentney does not even understand the Constitution of Canada or anything about ministerial responsibility and the notion that it is supposed to be a system of limited government, and that government in the exercise of powers is to be constrained by the law of the prerogative and the law of Parliament, the law that governs how law is made.

I responded to him, saying:

> I still have not had my question answered. Again, you have made an assertion. You are reaching conclusions, and saying that the conclusion is the reason. The Constitution of this land vests all executive authority in Her Majesty. This is not an ornament. This is a fact of law.
>
> The two law officers of the Crown are Her Majesty's two personal agents, ... and, have an entirely different role than any other minister. They may be in cabinet or they might

> not be. In some jurisdictions they are in, in some they are out. You have given me no constitutional reasons whatsoever as to how you can simply propose to change by a simple bill a fact that really concerns the Office of Her Majesty in this country.

Honourable senators, Minister Anne McLellan was of no help whatsoever, and Mr. Pentney, who seemed to believe that he spoke with some final authority greater than the minister's, similarly was of no help.

For the record, the questions that I raised on the floor of this house and in committee remain unanswered. My questions regarding the constitutional position of the Solicitor General of Canada and its treatment under Bill C-6 remain unanswered. Unhappily, this disinclination to answer questions and to explain policy properly is the modus operandi of this government, a government unequalled in arrogance and unsurpassed in parliamentary shoddiness.

Honourable senators, law professor Dr. Wes Pue, who is the University of British Columbia's Associate Dean of Graduate Studies and Research at the Faculty of Law, appeared before the Senate National Security and Defence Committee on February 14. He gave excellent and balanced testimony. He described the proper constitutional role of the Solicitor General, Her Majesty's secondary law officer of the Crown.

Dr. Pue told the committee:

> The Office of the Solicitor General happens to be one place in our Constitution where we have underlined in bold ink the importance of impartiality, of the rule of law and of integrity in the operation of justice. Those are key values to which all Canadians subscribe. I believe there is a difference between a minister for police and security, or whatever you want to call it, and a Solicitor General.

About the Solicitor General, he also indicated that those two terms, unlike what the government tells us, are more than just a name. Nowadays it is just a name. It is only a name; change it; change everything. Marriage, too, is just a name. Right.

Dr. Pue, a professor of law, said:

> It is very important that this position be staffed in those kinds of ways, rather than just trying to find someone to create regional balance or something, to serve in a position where they will, in fact, be prevailed upon by other people because they do not understand their job. It is a very important job; both Solicitor General and this ministry are very important jobs. In Canadian law we have terms of art that mean things. One of those is Solicitor General. It is not just minister of foreign affairs or external affairs or national dog catcher, it is a term of art in law that imports a whole lot of Constitutional convention, Constitutional history, which is an important part of the Constitution of this country and common law rulings in cases all over the world about duties of the Crown. It is more than just the name of another bureaucracy subject of shuffle. It carries a lot of meaning.

Honourable senators, Dr. Pue told us that, contrary to the government's assertions, the officer of Solicitor General is much more than a mere name that can be changed at the whim of a departmental official who is able to find the ear of a willing minister.

Dr. Pue went on to speak about Canada's constitutionalism and the special position of the Solicitor General, saying:

> We have a fine history of constitutionalism, we have a fine partly written Constitution, and we have a fine set of people in public office. My concern is not that if you leave the word "Solicitor General" out, you are immediately Nazi Germany, but that the historical weight of this office, what it has borne in our history, is precisely that of upholding those values that we hold dear, namely, the values of the rule of law and impartiality and the understanding that even when this person holds cabinet office, he or she is not a minister just like any other. He or she has special duties to the law.

Honourable senators, the government and the leadership in this place have consistently declined to accept the difference between the law officers of the Crown, the Attorney General and the Solicitor General, and other ministers of the Crown. I tell you, they give no reasons. This has preoccupied my mind, because it is to those two officers that Her Majesty entrusts the defence of the public interest and the whole phenomenon of the proper operation and the administration of justice. They have very, very special roles and constitutional relationships.

• (1930)

The Hon. the Speaker: Senator Cools, I regret to advise you that your 15 minutes have expired.

Senator Cools: I regret to say, Your Honour, that I think you are wrong.

My apologies, honourable senators. I was told I had 45 minutes. I could have spared myself much work.

Could I have leave to continue, honourable senators?

The Hon. the Speaker: Is leave granted, honourable senators?

Senator Rompkey: For five minutes.

The Hon. the Speaker: I hear that leave is granted for five minutes.

Senator Cools: Honourable senators, five minutes is not very much. I do not need to listen to the sound of my own voice. I am not charmed by my own voice, but I do think the record should show what the Senate committee heard. There has been no debate on this floor about what went on in the committee; what the minister said and what the minister did not say.

Honourable senators, could I have leave to continue for another 20 minutes?

The Hon. the Speaker: Is leave granted, honourable senators?

Some Hon. Senators: No.

The Hon. the Speaker: I will ask again. Is leave granted, honourable senators, for Senator Cools to continue for an additional 20 minutes?

Hon. Terry Stratton (Deputy Leader of the Opposition): Honourable senators, if I may, I misled Senator Cools with regard to the length of time she had to speak. I would ask the indulgence of this house not for 20 minutes, but for 10 rather than five minutes.

Senator Rompkey: We would agree to 10 minutes.

The Hon. the Speaker: That is agreed.

Senator Cools: It is a most strange situation to be constantly in the position of being a mendicant, when all I want to do is speak to the issue, and I cannot do that in 10 minutes, having expected to speak for 45 minutes.

MOTION IN AMENDMENT

Hon. Anne C. Cools: Honourable senators, I would like to move an amendment to the bill. I move:

That Bill C-6 be not now read a third time but that it be amended

(*a*) on page 1,

(i) by replacing, in the English version, the heading preceding line 7 with the following:

"ESTABLISHMENT OF THE DEPARTMENT; SOLICITOR GENERAL", and

(ii) in clause 2, by replacing lines 13 to 15 with the following:

"(2) The Minister is *ex officio* Her Majesty's Solicitor General of Canada, and holds office during pleasure and has the management and direction of the Department.";

(*b*) in clause 3, on page 1,

(i) by replacing line 16 with the following:

"**3.** (1) The Governor in Council may appoint a", and

(ii) by adding after line 20 the following:

"(2) The Deputy Minister is *ex officio* the Deputy Solicitor General.";

(*c*) on page 3, by adding after line 3 the following:

"POWERS, DUTIES AND FUNCTIONS OF THE SOLICITOR GENERAL

6.1 The Solicitor General of Canada

(*a*) is entrusted with the powers and charged with the duties that belong to the office of the Solicitor General of England by law or usage, in so far as those powers and duties are applicable to Canada, and also with the powers and duties that, by the laws of the several provinces, belonged to the office of solicitor general of each province up to the time when the *Constitution Act, 1867*, came into effect, in so far as those laws under the provisions of the said Act are to be administered and carried into effect by the Government of Canada;

(*b*) shall continue to exercise the powers and perform the duties and functions of the second Law Officer of the Crown under the common law; and

(*c*) shall carry out such other duties as are assigned by the Governor in Council to the Solicitor General of Canada.";

(*d*) in clause 8, on page 3, by replacing line 44 with the following:

"duty or function, or unless that power, duty or function vests in or is exercisable by the Solicitor General of Canada or the Deputy Solicitor General of Canada by virtue of section 6.1.";

(*e*) on page 7, by adding immediately before line 9 the following:

"17.1 Subparagraph (*b*)(i) of the definition "justice system participant" in section 2 of the *Criminal Code* is replaced by the following:

(i) the Minister of Public Safety and Emergency Preparedness and Solicitor General of Canada, and a Minister responsible for policing in a province,";

(*f*) in clause 18, on page 7, by replacing line 10 with the following:

"Act are replaced by the following:";

(*g*) on page 13, by adding after line 12 the following:

"SALARIES ACT

33.1 Paragraph 4(2)(*k*) of the *Salaries Act* is replaced by the following:

(*k*) the Minister of Public Safety and Emergency Preparedness and Solicitor General;"; and

(*h*) in clause 34,

(i) on page 13, by deleting lines 37 and 38,

(ii) on page 14, by renumbering subparagraphs (ii) to (xiv) of paragraph (1)(*f*) as subparagraphs (i) to (xiii), and

(iii) on page 15,

(A) by deleting line 32, and

(B) by relettering paragraphs (*v*) to (*y*) of subclause (1) as paragraphs (*u*) to (*x*).

Honourable senators, these amendments and the conceptual framework is borne exactly as this act was conceptualized. If one were to look at the first several paragraphs of Bill C-6, one would see that it forms a standard pattern, which I believe was begun by the Department of Justice Act which, as we know, was actually scripted by Sir John A. Macdonald because of the whole complexity of reconstituting those offices post-Confederation.

Interestingly enough, the Department of Justice Act, from which I borrowed the concept, says that there is hereby established a department of the Government of Canada called the Department of Justice, over which the Minister of Justice, appointed by commission of the Great Seal, shall preside. Its section 2 states:

> The minister is *ex officio* Her Majesty's Attorney General of Canada and holds office during pleasure and has the management and direction of the department.

Since the government grew the Solicitor General, or morphed it into another mutant, I thought that the principle that could be established here is the exact same principle that pertains in respect of the Attorney General and the Minister of Justice. That is why I propose to this chamber that the Minister of Public Safety would be ex officio Her Majesty's Solicitor General of Canada and would hold office during pleasure and have the management and direction of the department.

In other words, the Minister of Public Safety will also simultaneously be the Solicitor General of Canada, which is the proper way, and I think that is the way it should have been done in Bill C-6 so that the ancient powers and ancient common law rights would remain preserved. Yet, the Minister of Public Safety and the ministry of public safety would be established and be allowed to work to fulfil contemporary demands and contemporary needs.

I made it quite clear when I spoke with the minister that there was no problem. I think that Senator Kenny has done a fantastic job of demonstrating very clearly that there was a tremendous need to rethink the organization of national security in this country. Therefore, I have no quarrel with the concept of creating a new ministry to fulfil the needs of contemporary society where we are now plagued by problems of terrorism. My concern was that this could have all been attained without assaulting the position of the Solicitor General of Canada.

Honourable senators, I put those amendments before you for consideration. In closing, when I spoke on the point of order on Royal Consent about two weeks ago on February 23, I asserted that the bill did touch Her Majesty's prerogatives, particularly Her Majesty's Royal Prerogative in respect to pardon, mercy and clemency.

In another incarnation I served on the National Parole Board, one of the functions of which is to review cases and make recommendations to the minister, the Solicitor General, which went forth to the Governor-in-Council and to the Governor General.

• (1940)

The creation of those acts of Parliament that allowed for an administrative structure in which to have the possibility of granting pardons — they are limited pardons anyway, but that is another question — allowed that function to go into the general administration of the law. That is found again in the article of the letters patent of 1947 under the heading "grant of pardons." Article XII of the letters patent 1947 states:

> And We do hereby direct and enjoin that Our Governor General shall not pardon or reprieve any such offender without first receiving in capital cases the advice of Our Privy Council for Canada and, in other cases, the advice of one, at least, of his Ministers.

Honourable senators, the words "the advice of one, at least, of his Ministers" mean and meant the law officer of the Crown.

If we were to look at Bill C-6 today, even as it is scripted and as it is currently before us, the Minister of Public Safety will be that minister giving advice to Her Majesty in respect of pardons and clemency. I have always hoped that one day this house would undertake a serious study on that whole phenomenon of prerogative law of clemency. It includes remissions, paroles, conditional and unconditional pardons. It used to involve what they called commuting death sentences. This is a vast area of power and law and probably, along with the law of Parliament, the least studied of all systems of law.

I hope that one of these days this particular house will involve itself in those important matters. This is a huge area.

Honourable senators, I sincerely believe that the BNA Act, especially in sections 9, 63, 134, outlines the serious need for the law officer of the Crown. It has been a source of disappointment to see that we do not assert our constitutional heritage and that we do not attempt to maintain it, to carry it on for future generations. I suppose that is the state of governance and government in this country today, but I was British born and I was British raised. I believe that system of constitutionalism is the finest jewel in constitutionalism around the world. I invite honourable senators to uphold and defend it.

Some senators may think I am naïve. They may say, "What about all of these principles? Just get it done. Vote it out of the way and one more bill done. Two hours, two days, what does it really matter?" I disagree. These issues are extremely important. We are charged under our oath to uphold these systems.

The Hon. the Speaker: Honourable senators, it is moved by the Honourable Senator Cools:

> That Bill C-6 be not now read a third time but that it be amended —

Some Hon. Senators: Dispense!

The Hon. the Speaker: I will dispense.

Senator Kinsella wishes to speak.

Hon. Noël A. Kinsella (Leader of the Opposition): Honourable senators, I wish to speak in support of the amendment. The pith and substance of the argument that is made here, at least as understood by honourable senators on this side is, what harm is done in maintaining an office that Canadians understand, an office that has been around and is in place in many provincial jurisdictions?

This amendment does not interfere with the prime ministerial prerogative of setting out the machinery of government. I find this to be a fairly benign amendment and would encourage support for it.

Hon. Tommy Banks: Honourable senators, I wish to speak against the amendment. Actually, I have the temerity to suggest that I understand what Senator Cools is saying. Other senators may agree with her position; I do not. For a start, I refer to the quote she made regarding "his Ministers" — at the time, His Majesty's ministers. I think that members of the Privy Council and members of the cabinet of Canada are all ministers of the Crown.

Senator Cools: The law officers are different.

Senator Banks: The honourable senator did not say law officers; she said "ministers."

Parliament may decide either to pass this bill or not to pass it. In any event, it is not a constitutional amendment, per se; it is a bill. The government has presented it and we must now vote on it. We must decide in this house whether or not to pass the bill. I suggest it is as simple as that.

Senator Cools: The honourable senator said that he was speaking against the amendment. I accept that fact. Disagreement is desirable. However, it would be good, positive and interesting if the honourable senator would give some reasons why he disagrees. This entire debate has been permeated with "it is so because I say so." Could the honourable senator share with us the constitutional authority that he relied upon to come to his conclusion? I respect his opinion, but in our business, which is debate, it would be helpful if the players would actually explain why they support the position they have adopted with some authority other than their own personal will.

It is an aspect of constitutionalism that in the absence of constitutional authorities people make it up as they go along. William Lyon Mackenzie, the grandfather of Prime Minister Mackenzie King, used to say that it was the natural disposition of people in power to substitute their own interests for the interests of the public; in other words, they make it up as they go along.

I know that the honourable senator sat through the committee hearings. The committee had two little hearings, not very many. Senator Rompkey said a few days ago that the committee studied this bill exhaustively. It did not; the committee had two meetings on this bill. If we return to the record of debate when major reorganizations of departments ensued, there was much debate. These bills used to be preceded by resolutions, taking the sense of the house, even on the business of bringing a bill forward.

There has been little debate on this issue and very little committee study. Would it be so difficult for the supporters of the bill on the other side, with all the massive resources of departments that just churn things out for you — boom, put your name to it — to give us some constitutional authority that we could all point to and recognize?

• (1950)

Senator Banks: I can only speak for myself, honourable senators. I do not ask anyone else to churn out stuff that I stand here and read.

Speaking again for myself, with respect to the amendment, this is a bill of the government. The government must govern, and the government governs through the consent of Parliament. It is proposing this bill and I am opposed to the amendment because the government has satisfied me that this is a good bill and that it should proceed. I urge all senators to vote against the amendment and for the bill.

The Hon. the Speaker: Are honourable senators ready for the question on the amendment of Senator Cools?

Some Hon. Senators: Question!

The Hon. the Speaker: Will those honourable senators in favour of the motion in amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "nays" have it. The motion in amendment is lost.

Some Hon. Senators: On division.

Motion in amendment negatived, on division.

The Hon. the Speaker: We are now on the main motion.

It was moved by the Honourable Senator Banks, seconded by the Honourable Senator Ferretti Barth, that this bill be read the third time.

All those senators in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "yeas" have it.

Senator Kinsella: On division.

Motion agreed to and bill read third time and passed, on division.

FINANCIAL ADMINISTRATION ACT CANADA SCHOOL OF PUBLIC SERVICE ACT OFFICIAL LANGUAGES ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Ringuette, seconded by the Honourable Senator Hubley, for the second reading of Bill C-8, to amend the Financial Administration Act, the Canada School of Public Service Act and the Official Languages Act.

Hon. Donald H. Oliver: Honourable senators, I am pleased to rise this evening to join in the second reading debate on Bill C-8, an act to amend the Financial Administration Act, the Canada School of Public Service Act and the Official Languages Act.

I wish at the outset to commend Senator Ringuette for the excellence of her presentation made on Wednesday, March 9 on this subject. It was thorough, complete and comprehensive, and typical of the good work that she does on these files.

It is not my intention to repeat an exposition of the contents of the bill but rather to look at some of the broader issues, perhaps even philosophical issues and matters, and new questions to which bills such as this sometimes give rise. I would like to raise a number of questions, therefore.

As Senator Ringuette wisely expressed, Bill C-8 simply gives legislative confirmation to the Orders-in-Council that created the agency. It does not change powers or functions already conferred on the agency; it merely enshrines in legislation what already exists in fact. We must not forget that.

This bill is part of a restructuring of the functions of many parts of the Public Service of Canada. There have been major changes with the Public Service Commission and the Treasury Board Secretariat flowing from Bill C-25. Bill C-8 adds the position of the president of the agency to the Financial Administration Act, just as the Secretary of the Treasury Board and the Comptroller General are already identified therein. It specifies the nature of the powers and functions that may be delegated by the Treasury Board and the president of the agency in the same manner as is set out in the Financial Administration Act for the others.

Honourable senators, was this necessary? Do we need the establishment of the office of the President of the Public Service Human Resource Management Agency of Canada? Was it necessary to roll those functions out of the Treasury Board? Is this really going to help in the transparency and accountability that is so much a central theme of the activities of the Treasury Board Secretariat?

Bill C-8 provides that the President of the Treasury Board is responsible for the coordination of the activities of the Secretary of the Treasury Board, the President of the Public Service Human Resource Management Agency of Canada and the Comptroller General of Canada, but why is it necessary to role those functions out of Treasury Board and form a brand new agency?

One of the problems that we have in government is that Treasury Board Secretariat does not have enough power and authority now to do what it should do in relation to public accounts, the budget, the Main Estimates, the supplementary estimates and other spending initiatives to ensure that parliamentary scrutiny can be involved in all aspects of government spending.

One of the other things that has recently been rolled out of the Treasury Board and into the PCO is the new Expenditure Review Committee chaired by Minister McCallum. In his appearance before the Standing Senate Committee on National Finance on March 9, the President of the Treasury Board, the Honourable Reg Alcock, said:

> You will note that the almost $11 billion in reallocations identified by the Expenditure Review Committee is not reflected in the 2005-06 Main Estimates. It is typically the case with any budget decision that timing is such that detailed financial information is not available in time for the preparation of the estimates documents.
>
> ...more information on the Expenditure Review Committee reductions can be found on the expenditure review website. Departments and agencies will include a reference to this information in their reports on plans and priorities in the spring.

The minister later added:

> You will also remember that we have had some interesting discussions here...

— that is, in the Senate committee —

> ...about how to revise the estimates so that Parliament can more easily oversee government spending.

Honourable senators, that will not be achieved by rolling more and more of the Treasury Board functions out of the secretariat. Let us not forget what the Treasury Board is and what it does. The Treasury Board is a cabinet committee consisting of the President of the Treasury Board, the Minister of Finance and four other ministers. The Treasury Board Secretariat is the administrative arm of the Treasury Board. The secretariat is responsible for stewardship of public resources. It advises the Treasury Board on policies, directives and regulations, advises on and supports expenditure management across government, is responsible for the comptrollership function of government and oversees the executive Treasury Board decisions.

Honourable senators, you will remember that as part of a series of changes to the structure of the government outlined when Paul Martin was sworn in on December 12, 2003, it was announced that Treasury Board Secretariat would be streamlined and focused on comptrollership and financial management. It would ensure that departments met all requirements of expenditure planning, control and oversight and will assess policy proposals for the purpose of due diligence and value for money.

Then why is it necessary to roll out the public service human resource management functions? The 2005 budget booklet entitled "Strengthening and Modernizing Public Sector Management" indicates that the Treasury Board Secretariat will be consulting with parliamentarians in the coming months to develop a blueprint for improving reporting to Parliament.

I am wondering, honourable senators, if the rolling out of this new human resources agency from the secretariat will do anything to aid reporting to Parliament and parliamentary scrutiny of the estimates.

• (2000)

Honourable senators, one of the biggest problems we have in Canada is the budget which forecasts government plans for the fiscal year and often is very different from the Main Estimates which are tabled in Parliament. Why do we not look at ways of strengthening the Treasury Board, as it works more closely with the finance department which is charged with drafting the budget documents so that the budget documents and Main Estimates would more clearly, more accurately and more precisely reflect the government spending?

Another initial question that I would ask honourable senators is why is it necessary to incorporate a brand new public service human resource management agency when we have already the Public Service Commission of Canada, which is quite capable of doing the job? As the President of the Treasury Board said when speaking on Bill C-8 on October 26, 2004 in the other place:

> This is the discussion that came up on Bill C-11, an evolution in the role of the Public Service Commission. As we are discussing the legislation that puts in place and empowers the situation to deal with whistleblowing, we have talked a lot of how the role of the Public Service Commission, which traditionally has been the employing authority for government, is evolving and how it relates to other activities in government. This is another piece of that structure.

Let me ask you another question: Is this spin-off of this human resource agency out of Treasury Board and into a new agency going to hurt or retard future attempts to strength transparency and accountability? As the President of the Treasury Board said in the House of Commons last October:

> As the member will know, I am coming down with the reports on governance, accountability and ministerial responsibility, but it goes beyond that.

There are two concerns: First, is this bill going to do anything to harm or retard efforts currently taking place in several different areas of the administration to strengthen the accountability and transparency of the budgeting process and the process for preparation and presentation of the Main Estimates and the supplementary estimates? Secondly, is the passage of Bill C-8 going to do anything to retard initiatives under way to strengthen ministerial responsibility, accountability and answerability? Someone must look at the bigger picture.

Honourable senators, it is my hope that when this bill gets to committee, witnesses also be called to deal with some of these questions that we are now asking.

Bill C-8 is one of a series of bills that seeks to reorganize the government as announced by the Prime Minister more than a year ago. We are now in March 2005. The process is taking quite a while. Since December 2003, several newly-organized departments have operated through Orders-in-Council without the benefit of a statute that would clearly define their mandate or their powers and the responsibilities of their minister.

Two of the many bills that seek to achieve this reorganization were defeated at second reading stage, at which time approval in principle is established in the other place. Another has had a rough ride here in the Senate over a constitutional issue. We have seen some dithering in the case of this bill which creates the Public Service Human Resource Management Agency of Canada, as the government has changed its mind on who ought to be the responsible minister.

Honourable senators will recall that the Treasury Board is a cabinet committee consisting of the president and others. The management of human resources issue has long been the responsibility of the President of the Treasury Board and the board's administrative arm, the Treasury Board Secretariat. The secretariat is responsible for stewardship of public resources.

As parts of a series of changes in the structure of government outlined way back in December of 2003, streamlining was announced as well as that the focus would be on controllership and financial management. The Treasury Board would ensure that departments met all requirements for expenditure planning, control and oversight and would assess policy proposals for the purposes of due diligence and value for money.

As the Prime Minister said in the December 12, 2003 announcement:

> As part of the streamlining of the Treasury Board Secretariat, a new Public Service Human Resource Management Agency of Canada will be established under the President of the Queen's Privy Council and will, in consultation with unions and public servants, implement the newly legislated human resource reforms.

Seven months later, in July 2004, the Prime Minister changed his mind. The agency would instead carry out the powers to be delegated by the Treasury Board with the president as the responsible minister. What has happened here? It seems that government has created yet another agency to be headed by the equivalent of a deputy minister and left the directions in the hands of the minister who has traditionally handled the file.

Exactly what has been streamlined? Not much, as far as I can see. It certainly has not simplified anything for those trying to sort out the differences between the President of the Treasury Board, the Treasury Board Secretariat and the new agency. I would suggest that the government needs to make a stronger case for this agency than we have heard so far.

Bill C-8 refers to the Comptroller General, a new position created as part of the government's efforts to strengthen comptrollership and oversight across the federal government. On May 6, 2004, a press release welcoming the announcement of Charles-Antoine St-Jean as the Comptroller General, Treasury Board President Reg Alcock said the following:

> One of Mr. St-Jean's key roles will be to promote stronger financial controls that are essential to ensuring rigorous stewardship of public funds and value for money.

In the same release, Finance Minister Ralph Goodale said:

> We need to provide honest, ethical, efficient management. We need strong internal comptrollership and effective, timely audits. And we need conscientious political oversight and accountability.

Bill C-8 does not spell out the role and duties of the Comptroller General, but in the same release we learn that the key duties of the office include overseeing all government spending, including review and signing off on new spending initiatives, setting and reviewing financial, accounting and audit standards and policies for the Government of Canada, and providing leadership to ensure and enforce appropriate financial controls and cultivate sound resources and stewardship of all levels across the federal public service.

The creation of this position is a welcome step forward, but it will do little to address fundamental issues of accountability.

Ironically, honourable senators, the key issue for this recent flurry of government reorganization was to restore accountability to Parliament in Canada. As Treasury Board President Reg Alcock told the House of Commons on October 26, 2004, that reorganization was intended primarily to advance the priorities of Canadians by improving services and their delivery, but also by making sure that the government has the tools it needs to restore the confidence of Canadians in their public service to sound fiscal management, more rigorous allocation of resources and, above all, implementation of the highest standards of ethics, openness, transparency, accountability and reporting to Parliament.

However, since then, the President of the Treasury Board has postponed the planned major review of ministerial and bureaucratic accountability because he does not want to act until after the Gomery report is released. Does the government really need to wait until Justice Gomery reports at the end of this year to begin this important review? The *Hill Times* of February 28 reported that the Minister of Justice feels that he is too busy to proceed with his long-promised amendments to the Access to Information Act. So much for tackling the democratic deficit.

Right now nothing is being done to improve accountability, and the list of recent bureaucratic and political mishaps continues to grow. One thing we ought to be carefully considering is the solution that has proven to work in the parliamentary system, and one that has been suggested by royal commissions, academics and bureaucratic gurus. That is the use of accounting officers as a model based on the British experience. The potential for this model in Canada was discussed recently by Donald J. Savoie, founder of the Canadian Institute for Research on Regional Development, in his book *Breaking the Bargain*. In this model, which dates back to 1872 in Britain, the deputy minister of the department, or head of the department, acts as an accounting officer and bears full and personal responsibility for matters related to financial propriety and regularity, prudent and economical administration, as well as value for money. These responsibilities rest with the accounting officer unless explicitly overruled in writing by his minister.

The Lambert commission of 1979, formally titled the Royal Commission on Financial Management and Accountability, also suggested a similar practice for Canada. The commission pointed out that deputy ministers were already assigned legal responsibility by acts of Parliament, but that deputy heads are not regularly held accountable in a systematic or coherent way for program management and departmental administration. The answer, of course, was to hold them accountable in a systematic way. The commission said, and I quote:

> ...unless the accountability of deputy heads is defined and made real, delegation of managerial authority can never adequately support the individual and collective responsibility of ministers as we have said it must.

• (2010)

The position of an accounting officer does not take away from the two pillars of Canadian government, namely, ministerial responsibility and a neutral public service; rather, it divides the area of responsibility between the minister and his deputy in a clear and specific way. It is an exception to the neutral public servant that recognizes the political elements of the role of the deputy minister and clarifies the lines of accountability for their already existing legal responsibilities.

In conclusion, honourable senators, C.E.S. Franks from Queen's University, one of Canada's leading experts on the accounting officer, has pointed to the success of this position in the United Kingdom. He points out that full and personal responsibility of the accounting officer remains central to the British system of financial control and accountability, and indeed of good management generally, and the position and the practices that have developed around it establish a clear and firm division between the responsibilities of the public service and those of the minister. This is a solution that warrants further investigation for its potential in Canada. It gets to the heart of the problem. It deals with the accountability gap in Canada.

Honourable senators, I am not convinced that Bill C-8 will solve any real problems. Creating a new agency will not address one of the most serious problems facing the public service in Parliament — a lack of clear accountability. I look forward to discussing these issues in greater depth in committee.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Rompkey, bill referred to the Standing Senate Committee on National Finance.

HUMAN RIGHTS

BUDGET—REPORT OF COMMITTEE ON STUDY OF INTERNATIONAL OBLIGATIONS REGARDING CHILDREN'S RIGHTS AND FREEDOMS ADOPTED

The Senate proceeded to consideration of the thirteenth report of the Standing Senate Committee on Human Rights (budget—study on the rights and freedoms of children) presented in the Senate on March 10, 2005.—(*Honourable Senator Andreychuk*)

Hon. A. Raynell Andreychuk moved the adoption of the report.

Motion agreed to and report adopted.

BUDGET—REPORT OF COMMITTEE ON STUDY OF ISSUES RELATED TO NATIONAL AND INTERNATIONAL OBLIGATIONS ADOPTED

The Senate proceeded to consideration of the fourteenth report of the Standing Senate Committee on Human Rights (budget—study on Canada's human rights obligations) presented in the Senate on March 10, 2005.—(*Honourable Senator Andreychuk*)

Hon. A. Raynell Andreychuk moved the adoption of the report.

Motion agreed to and report adopted.

BUDGET—REPORT OF COMMITTEE ON STUDY OF CASES OF ALLEGED DISCRIMINATION IN HIRING AND PROMOTION PRACTICES AND EMPLOYMENT EQUITY FOR MINORITY GROUPS IN FEDERAL PUBLIC SERVICE ADOPTED

The Senate proceeded to consideration of the fifteenth report of the Standing Senate Committee on Human Rights (budget—study on the Federal Public Service) presented in the Senate on March 10, 2005.—(*Honourable Senator Andreychuk*)

Hon. A. Raynell Andreychuk moved the adoption of the report.

Motion agreed to and report adopted.

BUDGET—REPORT OF COMMITTEE ON STUDY OF LEGAL ISSUES AFFECTING ON-RESERVE MATRIMONIAL REAL PROPERTY ON BREAKDOWN OF MARRIAGE OR COMMON LAW RELATIONSHIP ADOPTED

The Senate proceeded to consideration of the sixteenth report of the Standing Senate Committee on Human Rights (budget—study on an invitation to the Minister of Indian and Northern Affairs) presented in the Senate on March 10, 2005.—(*Honourable Senator Andreychuk*)

Hon. A. Raynell Andreychuk moved the adoption of the report.

Motion agreed to and report adopted.

THE SENATE

RULES OF THE SENATE—MOTION TO CHANGE RULE 135—OATH OF ALLEGIANCE—DEBATE CONTINUED

Leave having been given to revert to Motion No. 58:

On the Order:

Resuming debate on the motion of the Honourable Senator Lavigne, seconded by the Honourable Senator Robichaud, P.C.:

That the *Rules of the Senate* be amended by adding after rule 135 the following:

135.1 Every Senator shall, after taking his or her Seat, take and subscribe an oath of allegiance to Canada, in the following form, before the Speaker or a person authorized to take the oath:

I, (*full name of the Senator*), do swear (*or solemnly affirm*) that I will be faithful and bear true allegiance to Canada.—(*Honourable Senator Downe*)

Hon. Mira Spivak: Honourable senators, I am very supportive of this motion. It is an excellent example of how we can recognize the need for important traditions to evolve and the need to adopt those changes.

Oaths of allegiance have a very long history. The foundation of all modern oaths dates back to the coronation of Anglo-Saxon kings, when it was not the people but the monarch who took an oath to do justice and to preserve peace among his people — and not, incidentally, to guarantee the rights of the Catholic Church. Ethelred the Unready swore such an oath in 978.

The first oaths required of citizens were created in 1534. Henry VIII wanted to ensure that his subjects accepted his supremacy over the church and his arrangements for the succession, despite his unorthodox marital arrangements.

The oath required of parliamentarians today has its origin in the reign of Elizabeth I, who, in 1562, required members of the British House of Commons to swear to her spiritual, as well as temporal, supremacy. Over time, that oath also changed until, in 1689, in the reign of William and Mary, allegiance was expressed in the now familiar words that are enshrined in our Constitution:

• (2020)

> I swear that I will be faithful and bear true allegiance to (the reigning King and/or Queen).

This motion will not alter those age-old words or their true meaning. More important, it would not require a constitutional amendment. It would add an oath of allegiance to Canada, our country. It would explicitly express what may be implied in the existing oath, but is not well understood by most people today unless they have a great deal of historical knowledge and apply a liberal interpretation to it.

In the other place, a member's oath or solemn affirmation of fidelity and allegiance to Her Majesty Queen Elizabeth II is interpreted as allegiance to the Queen as Sovereign of Canada and includes the institutions the Queen represents, the concept of democracy and the democratic institution of Parliament.

This is not readily obvious to most Canadians — perhaps to many of us. The wording "Sovereign of Canada" is not found in the current oath that we take and that they take in the other place.

If we need further proof that the meaning is obscure, we only have to look to changes made to the Oath of Allegiance for new Canadians under the Citizenship Act. In 1977, the Trudeau government added the words "Queen of Canada" after the Queen's name and redubbed it the Canadian Citizenship Oath.

In the other place, there has been considerable debate about both the citizenship oath and the oath taken by parliamentarians. Private member's bills to amend the Parliament of Canada Act to achieve what this motion would achieve have been introduced repeatedly in subsequent sessions and in subsequent Parliaments. Among them, Bill C-408 in the second session of the Thirty-seventh Parliament would require all members of Parliament to swear loyalty to Canada.

The government also proposed significant changes to the citizenship oath that, like Australia's oath, would take the form of a pledge to the country, but unlike Australia's would also pledge loyalty and allegiance to Her Majesty Elizabeth II, Queen of Canada. Successive bills to amend the Citizenship Act have died on the Order Paper.

There was considerable debate on the matter, however, and, not unexpectedly, opposition from the Monarchist League of Canada that wanted to preserve the status quo. In advancing its position, the league did make some points that would be worthwhile for us to consider.

First, it made clear that oaths are not just pious statements of goodwill. They are legally binding commitments with consequences to those who fail to live up to them. As such, they should be as precise and as limited as possible.

Second, the existing oath is a reciprocal arrangement. The sovereign makes an oath to the people in his or her coronation, and the people at various times take oaths of allegiance to the sovereign. Even if we did not face the difficulty of making a constitutional amendment to alter our current oath, I am not persuaded that it would be a good idea to radically change it. Canada itself, except through its personification of the Queen, cannot take an oath to Canadians.

Third, there is clarity in an oath to a sovereign, the head of our national family. What is Canada? Is it the geography? Is it the collective people? Is it collective governments? Each of us holds an idea of Canada in our hearts and minds, and those ideas often differ. Who is to judge whether an oath of allegiance to Canada has been violated?

During the debate on Senator Lavigne's motion, references have been made to oaths of allegiance in other countries. The United States is often held up as an example among nations that very strongly instill allegiance to country. In fact, the Oath of Allegiance to the United States of America is a good deal more precise than the name implies. It requires citizens to support and defend the Constitution and the law of the United States of America against all enemies. It requires them to bear arms on behalf of the United States when required by law, to perform non-combatant service in the Armed Forces when required by law, and to perform work of national importance under civilian direction when required by law. It is anything but a vague oath.

I am not suggesting that we adopt the American model. In fact, it is curious that what this motion would do is entirely British. The British oath of allegiance for citizens is a two-part model, as ours would be if we adopt this motion. First comes allegiance to the Queen; next comes loyalty to the United Kingdom, respect for its rights and freedoms, and a promise to uphold its democratic values.

As an alternative to this motion, we could consider an oath of allegiance to our Constitution and Charter of Rights and Freedoms. It would be more precise. That is an option taken by parliamentarians in Ireland, the Netherlands and perhaps several other countries. However, I do not have strong feelings on that point.

This very cursory review of the history of oaths, which Senator Lavigne's motion has actually inspired me to do, teaches two important lessons. First, oaths do change over time, and there is no need for us to feel that we must be bound to an oath put in place for us in 1867. Second, this is anything but a trivial matter. Oaths have an important part in the history of a nation and, as the nation evolves, so should its oaths.

There is ample evidence that Canadians as a whole do not regard this as a trivial matter either. Senator Lavigne has tabled more than half a million letters in support of it. I am very pleased that some of those letters come from MacGregor and District Chamber of Commerce in MacGregor, Manitoba, the Flin Flon and District Chamber of Commerce and the Castlegar/Robson Branch of the Royal Canadian Legion in British Columbia. I see those as a good sign that this is a unifying issue, not a divisive one.

As an immigrant to this wonderful country, I am supportive of this motion. I congratulate Senator Lavigne, and I hope we can adopt it.

On motion of Senator Rompkey, debate adjourned.

The Senate adjourned until tomorrow at 2 p.m.

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