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Wednesday, April 20, 2005

THE HONOURABLE DANIEL HAYS
SPEAKER

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THE SENATE

Wednesday, April 20, 2005

The Senate met at 1:30 p.m., the Speaker in the chair.

Prayers.

[*Translation*]

SENATORS' STATEMENTS

REPORT OF L'AUTORITÉ DES MARCHÉS FINANCIERS

Hon. Madeleine Plamondon: Honourable senators, I would like to draw to your attention an important report by Quebec's Autorité des marchés financiers, dated April 14.

The report concerns the commercial practices among property and casualty insurance brokers in Quebec.

Its findings confirm what a number of consumers groups have already decried: brokers, who should be independent of the major insurance companies are not, in fact. Brokers steer their business to one or two large insurance companies. Some practices, such as making loans to firms, holding property liens and making block transfers, are not in consumers' best interests.

The report indicates, on the subject of loans to firms, that insurers give loans to the firms they do business with. There are conditions attached to the loans, which, in some instances, continue to apply from one to five years after the insurer's loan is repaid. Firms may be required to deliver a minimum volume of premiums to the lending insurance company.

In the case of property liens, 23 per cent of the major firms have reported that an insurer held a property lien with them. In over 90 per cent of the cases, insurers with an interest in firms are front-runners in sales.

Let us move on to the next point now: block transfers of business. In the case of a firm, a block transfer involves transferring client business from one insurer to another in exchange for additional sums.

Finally, there are the contingent commissions paid to firms by insurers. Basic payments are sweetened if an objective of selling the insurer's products is met. It feels as if the tsunami generated by the investigations of Eliot Spitzer, the Attorney General of New York, is making waves in Canada. In 2003, in Quebec alone, sales of property and casualty insurance amounted to $6.7 billion dollars, $4.2 billion of which was personal insurance.

This insurance no doubt has an impact on liability insurance and individuals' personal home and auto liability.

The problems raised in the report are significant.

[*English*]

Honourable senators, these practices influence Canadians' premiums and their freedom of choice. As the Autorité des marchés financiers will consult the insurance industry and consumers on the best regulatory solutions, we should be alert.

[*Translation*]

In the meantime, consumers need to question their brokers in order to find out the real range of companies offered to them and to determine which company best suits their particular needs.

Caveat emptor!

Consumer beware!

Consommateur, protège-toi!

CRIMINAL CODE

WITHDRAWAL OF SECTION 43— PROTECTION OF CHILDREN

Hon. Céline Hervieux-Payette: Honourable senators, I would like to draw your attention today to a petition tabled in the House of Commons on Monday, calling for the repeal of section 43 of the Criminal Code.

This is the text of the petition, signed by 3,000 persons and sponsored by Dr. Pierre Mailloux, a psychiatrist, and Mr. Jacques Béliveau, whom I would like to congratulate on this initiative. Their petition reads as follows:

> By these presents, we call upon the Prime Minister of Canada to repeal section 43 of the Canadian Criminal Code, which reads as follows:
>
> > Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

At the present time, more than 150 Canadian associations and organizations working with children support the pure and simple abolition of the defence allowing parents and teachers to use physical correction on children. Dr. Mailloux, moreover, says the following on page 52 of his publication *Pour l'amour des enfants — Non aux châtiments corporels!*:

> The problem is that it is not necessary to hit a child often, or to strike him or her with force. The effects are unpredictable. If the child has a strong character, soon a little smack will not be enough. It will escalate to spanking with the hand, then with a ruler, a belt, a stick. Just how far are you prepared to go? Will the child be scarred for life? This happens, and it happens more often that we like to admit.

Section 43 of the Criminal Code is no longer acceptable in Canada. We must respect the United Nations Convention on the Rights of the Child, which Canada signed and ratified, but did not implement. Some 15 countries, mostly in the European Union, amended their laws in order to meet their obligations under the convention. Sweden, in particular, which amended its law in 1979, saw a dramatic drop in juvenile delinquency and child placement with the adoption of this measure. Politics aside, the general situation for children has to improve and this measure does not require major investment.

That is why, honourable senators, it is important to pass Bill S-21 as soon as possible.

• (1340)

[*English*]

MS. VIRGINIA REDHEAD

Hon. Terry Stratton (Deputy Leader of the Opposition): Before the HMCS *Winnipeg* set sail for the Persian Gulf from Victoria, British Columbia, a little over a week ago, the crew invited a very special guest from Winnipeg to see them off — 20-year-old Virginia Redhead, a woman of remarkable courage and determination.

The HMCS *Winnipeg* supports the Firefighters' Burn Fund of Manitoba. The burn fund has provided some $1 million worth of equipment to the Health Sciences Centre Burn Unit. Last February, when the crew of the HMCS *Winnipeg* was touring the burn unit, the Firefighters' Burn Fund invited Virginia to meet with them.

While still a toddler, Virginia was caught in a fire that burned 90 per cent of her body. She lost both her hands and has gone through painful surgeries and skin grafts as she has grown. The burn unit was Virginia's home until she was four years old, and she has spent countless hours there since. According to Virginia, "It's changed my life big time; I wouldn't know how to cope."

Gary Macdonald, a co-founder of the burn fund, and his wife, Sandy, are close friends of Virginia, whom Gary describes as "a little tiger." According to Gary, when the sailors of the HMCS *Winnipeg* met Virginia, they hit it off right away. He said, "They loved her and treated her like a person." They knew that they wanted this remarkable woman to bid them farewell when they left for the Gulf.

Virginia's trip to Victoria for the deployment was both enjoyable and emotional. She met the rest of the crew of the HMCS *Winnipeg* and found them all wonderfully hospitable. Now back in Winnipeg, Virginia is working to complete her grade 12. She has recently moved out on her own and, as she says, "likes to be with my friends and family, and go out and have fun." In other words, a typical kid. She was also a counsellor at a camp for burn survivors from age five to 17, which she herself attended when she was younger. She says, "I spread my experience to the other kids and help them not to be afraid of scars and to look at the inside."

Virginia says that she has always worked with kids and that she is hoping to continue working with them. To get her plan into action, she intends to take a two-year course in child and youth care at Red River Community College starting next fall. However, she has other plans as well, and that is to go out into the world and tell people about burn survivors.

Virginia, good luck on your journey. Your courage is inspiring young burn survivors. It is also inspiring Canadian sailors in the Gulf, and me.

MASILIIT AND TORNGAT FISH PRODUCERS COOPERATIVE SOCIETY FISHING AGREEMENT

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, yesterday Senator Adams and I — and Senator Comeau, Senator Watt and Senator Sibbeston were there as well — had the pleasure of witnessing the signing of an historic agreement between two Inuit groups for a new fish harvesting venture. Nattivak Hunters and Trappers of Nunavut's new fishing company, Masiliit, and Torngat Fish Producers Cooperative Society of Northern Labrador have entered into an agreement to harvest Torngat's 160-tonne turbot quota. The catch will be delivered to the fish plant at Makkovik, Labrador, creating much-needed jobs for that community. The quota will be caught by Masiliit's new fishing vessel, the *Genny and Doug*, a modern 100-foot fixed-gear fishing vessel. An additional 160 tonnes of Nattivak's 330-tonne turbot quota will be landed at Makkovik.

Torngat Fish Producers Cooperative is an Aboriginal cooperative formed in 1980 by fishermen and plant workers from six Northern Labrador communities. The co-op has processed a wide variety of seafood products, particularly since it was hard hit by the cod and salmon moratoria. They have had successful operations in crab, scallop, turbot, char, whelk, sea urchin and seal. The co-op's activities are financed in part by commission income received from its offshore fish licence, which it has had since the 1970s.

It is ironic, honourable senators, that nations cannot agree on who can fish what quotas within and without Canada's 200-mile limit, but Canadian Inuit can find ways of pooling resources, catching capacity and processing so that everyone benefits. Perhaps we can learn something that the Inuit have believed in for centuries and is fundamental to their way of life — cooperation and sharing.

I join Senator Adams in congratulating and saluting Nattivak and Torngat on the success they continue to achieve on behalf of their people.

FOREIGN AFFAIRS

CHINA—RIGHT TO PROTEST

Hon. Consiglio Di Nino: Honourable senators, over the last few days I was pleased to see that thousands of Chinese citizens have been engaged in public demonstrations to voice their displeasure about alleged injustices and atrocities committed by Japanese soldiers during their occupation of China. Without commenting on the merits of their protests, I applaud this collective action by

the Chinese people and hope that it represents a breakthrough for the citizens of that country to be allowed to take strong public stands to protest injustices and wrongdoings.

The question is: Will the citizens of China be allowed to protest the injustices of their own government? The Chinese people have taken strong collective action against their own government before, including in Tiananmen Square in 1989, when thousands of protesters for democratic reform took to the streets, only to be brutally dispersed by the Chinese military government, causing thousands of deaths.

I hope the recent citizen actions in China will eventually lead to their ability to protest the Chinese government's denial of fundamental rights and freedoms, such as the brutal repression of the Tibetan people, the religious persecution of groups like the Falun Gong, the oppression of Uygur people in the Xinjiang region and the bullying of Taiwan.

Could the events of the past days really be a wind of change in China? Are we seeing the Tiananmen Square spirit rise again? I certainly hope so. Or is this just another sanctioned and controlled event? I hope not.

Honourable senators, I choose to remain optimistic that soon the light of justice, freedom and fundamental rights will once again shine fully on China.

MASILIIT AND TORNGAT FISH PRODUCERS COOPERATIVE SOCIETY FISHING AGREEMENT

Hon. Willie Adams: Honourable senators, I would like to join with my colleague Senator Rompkey in his statement of a few moments ago.

The guests introduced yesterday in this chamber were in Ottawa to sign an historic agreement between the Qikiqtarjuaq Nattivak Hunters and Trappers Association's new fishing company, Masiliit, and Torngat Fish Producers Cooperative Society of Makkovik, Labrador.

The ceremony was attended by Senators Rompkey, Watt, Sibbeston and Comeau, the chairman and members of the Fisheries Committee. Also in attendance were members of Parliament Peter Stoffer and Shawn Murphy, who is the Parliamentary Secretary to the Fisheries Minister, Geoff Regan. Mr. Wally Anderson, a member of the Legislature of Newfoundland and Labrador, who represents the riding of Makkovik, came to Ottawa to witness the signing.

Ms. Signoorie, an elder from the Inuit community, blessed the ceremony and later, in my office, lit the kudlik, which symbolizes the light and the warmth of an Inuit home. There were throat singers and five-year-old drummers from the Inuit Headstart Program. These young people represent the future of Nunavut and our desire to administer our resources.

As honourable senators will remember, the Senate Fisheries Committee carried out a study on the Nunavut and Nunavik fishing industry in the fall of 2003, and one of the recommendations of the study proposed that, in planning the future of the Nunavut fishing industry, small-vessel community fisheries be considered. This will be the first such undertaking.

This is an historic agreement because it is the first agreement of its kind in the North, as it is between two Inuit organizations that are made up exclusively of Inuit fishermen and plant workers from Nunavut and Labrador.

The agreement sets out that the two organizations will share quota which has been allocated to each community for common purposes. The Nattivak Hunters and Trappers Association recently purchased a new 100-foot fixed-gear fishing vessel, and when it fishes the Torngat quota, it will land the catch at their fish plant in Makkovik.

• (1350)

Both communities will benefit from this agreement by providing much needed jobs in both the fishing and processing aspects of the industry. Honourable senators, I hope this is the first of many agreements to be signed.

Three years ago, the Senate Fisheries Committee, chaired by Senator Comeau, went to Nunavut as part of its study on the future of fishing in Nunavut. After talking to the people in the community, we made recommendations for the future of the Nunavut fishery and the harvesting of the fish. The future lies with cooperation with the people in Nunavut, as they are familiar with the fishing in the area. Some of the Inuit have been working in the fishery up there for 15 or 20 years. I look forward to more jobs and a better economy for these communities in the future.

ROUTINE PROCEEDINGS

BANKING, TRADE AND COMMERCE

BUDGET—REPORT OF COMMITTEE ON STUDY OF CONSUMER ISSUES ARISING IN FINANCIAL SERVICES SECTOR PRESENTED

Hon. Jerahmiel S. Grafstein, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Wednesday, April 20, 2005

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

NINTH REPORT

Your Committee, which was authorized by the Senate on Tuesday, November 16, 2004 to examine and report on consumer issues arising in the financial services sector, 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,

JERAHMIEL S. GRAFSTEIN
Chair

(*For text of budget, see today's* Journals of the Senate, *Appendix A, p. 780*.)

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

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

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—REPORT OF COMMITTEE ON STUDY OF ISSUES DEALING WITH DEMOGRAPHIC CHANGE PRESENTED

Hon. Jerahmiel S. Grafstein, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Wednesday, April 20, 2005

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

TENTH REPORT

Your Committee, which was authorized by the Senate on Tuesday, November 23, 2004 to examine and report on issues dealing with the demographic change that will occur in Canada within the next two decades, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary, for the purpose of such study.

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,

JERAHMIEL S. GRAFSTEIN
Chair

(*For text of budget, see today's* Journals of the Senate, *Appendix B, p. 786*.)

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

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

BUDGET AND AUTHORIZATION TO TRAVEL—REPORT OF COMMITTEE ON STUDY OF DOMESTIC AND INTERNATIONAL FINANCIAL SYSTEM PRESENTED

Hon. Jerahmiel S. Grafstein, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Wednesday, April 20, 2005

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

ELEVENTH REPORT

Your Committee, which was authorized by the Senate on Wednesday, October 20, 2004 to examine and report upon the present state of the domestic and international financial system, respectfully requests that it be empowered to travel outside Canada for the purpose of such study.

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,

JERAHMIEL S. GRAFSTEIN
Chair

(*For text of budget, see today's* Journals of the Senate, *Appendix C, p. 791*.)

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

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

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—REPORT OF COMMITTEE ON STUDY OF ISSUES DEALING WITH INTERPROVINCIAL BARRIERS TO TRADE PRESENTED

Hon. Jerahmiel S. Grafstein, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Wednesday, April 20, 2005

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

TWELFTH REPORT

Your Committee, which was authorized by the Senate on Tuesday, November 23, 2004 to examine and report on issues dealing with interprovincial barriers to trade, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary, for the purpose of such study.

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,

JERAHMIEL S. GRAFSTEIN
Chair

(*For text of budget, see today's* Journals of the Senate, *Appendix D, p. 796*.)

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

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

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—REPORT OF COMMITTEE ON STUDY OF ISSUES DEALING WITH RATE OF PRODUCTIVITY PRESENTED

Hon. Jerahmiel S. Grafstein, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Wednesday, April 20, 2005

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

THIRTEENTH REPORT

Your Committee, which was authorized by the Senate on Tuesday, November 23, 2004 to examine and report on issues dealing with productivity, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary, for the purpose of such study.

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,

JERAHMIEL S. GRAFSTEIN
Chair

(*For text of budget, see today's* Journals of the Senate, *Appendix E, p. 801*.)

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

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

[*Translation*]

L'ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

MEETING OF POLITICAL COMMITTEE, MARCH 3-6, 2005—REPORT TABLED

Hon. Rose-Marie Losier-Cool: Honourable senators, pursuant to rule 23(6), I have the honour to table, in both official languages, the report of the Canadian Branch of the Assemblée parlementaire de la Francophonie on its attendance at the meeting of the Political Committee of the APF held in Libreville, Gabon, from March 3 to 6, 2005.

[*English*]

REBUILDING OF SOUTHEAST ASIA AFTER TSUNAMI

NOTICE OF INQUIRY

Hon. Lorna Milne: Honourable senators, pursuant to rule 56, I give notice that, at the next sitting of the Senate:

I shall call the attention of the Senate to my recent visit to Indonesia and to Canada's effort to help rebuild Southeast Asia after the tragic tsunami of December 26, 2004.

The Hon. the Speaker: Honourable senators, is leave granted for this inquiry to be given one day's notice rather than two?

Hon. Senators: Agreed.

QUESTION PERIOD

THE ENVIRONMENT

KYOTO PROTOCOL—PLAN OF COMPLIANCE

Hon. Terry Stratton (Deputy Leader of the Opposition): Honourable senators, my question is for the Leader of the Government in the Senate and relates to whether Paul Martin can be trusted on the issue of climate change. In last week's *Globe and Mail*, Industry Minister David Emerson said that to meet the Kyoto target, the government would buy emission credits, or hot-air credits, from countries that have met and exceeded their climate change targets. This includes countries whose economies have collapsed, as I said earlier, such as Russia. The Kyoto plan itself says:

...the Climate Fund will purchase domestic emission reductions and, in those cases that are demonstrably in the national interest, international reductions that are recognized under the Kyoto Protocol.

• (1400)

Paul Martin said it was the wrong way to go in 2002 when he told the other place that we must reject outright the purchase of hot-air credits from abroad. Canadian dollars are better invested in meaningful emissions-reduction technology here in Canada.

Finance Minister Ralph Goodale spoke against buying hot-air credits when he told the House of Commons Standing Committee on Environment and Sustainable Development in February, a mere two months ago, that, clearly, that kind of international expenditure is not on Canada's agenda.

This government has had eight years to get it right. Why the flip-flop? How can we trust Paul Martin when he has so clearly said one thing and then does another?

Hon. Jack Austin (Leader of the Government): Honourable senators, the government's Kyoto plan has been widely accepted by both the business and environmental communities. The methods by which we will achieve our objectives for the Kyoto Protocol are laid out in Project Green and the general plan.

With respect to the question of whether Canada will need to buy credits to meet its objectives, that remains to be seen. As I said yesterday in answer to an almost identical question from Senator Stratton, that is not our preferred objective. However, Canada has international obligations and it is fair to let the environmental and economic communities know that if we cannot reach those targets — meaning if all of us working together, business, governments and individuals, cannot achieve those targets — and Canada wishes to comply with its Kyoto obligations, then that alternative is present. It is not the government's preferred alternative.

Senator Stratton: The Honourable Leader of the Government is saying that is not his preferred alternative. However, buying the hot-air credits is described in the plan as, "one of the primary tools for Canada's approach to climate change."

Is the honourable senator telling us that what is in the plan, as I quoted, is not in the plan?

Senator Austin: I hope Senator Stratton can tell the difference between priorities and the way in which our objectives will be achieved. I said yesterday we live on one planet. No one country can be clean while other countries remain under environmental difficulty. We live on one planet and the environmental issue is a problem for the entire planet.

Canada wants to make its contribution. We want to do it, as far as we possibly can, by using all the steps that we can take domestically. However, there is pollution coming to Canada from many parts of the world. If, for example, we can help reduce the pollution coming to Canada or circulating around the world from a country such as China by ensuring that steps are taken with respect to global management, then we will have to do so.

Senator Stratton: It is interesting how the honourable senator dances around the statement. In the plan, it states, and I reinforce once again, it is "one of the primary tools for Canada's approach to climate change." If that does not tell you that it is on the top echelon in terms of tools, I do not know what does.

The honourable senator purports to be concerned to get across the message that his government is environmentally friendly. We have in the Senate right now Bill C-15, which will strengthen enforcement of measures designed to protect Canada's marine environment from polluters. Every Atlantic premier and the overwhelming majority of Canadians want this bill passed.

Can the honourable senator tell me when we can expect that back from committee?

Senator Austin: Senator Stratton knows as well as I that the committee has charge of the bill and the Senate awaits its report.

Senator Stratton: Does the leader not think that, with the spectre of an election hanging over our heads, we should do everything in our power to expedite this bill out of committee?

Senator Austin: Honourable senators, I trust the judgment of the committee and I await its report.

Hon. Leonard J. Gustafson: It is my understanding that many of the major countries are not going along with the Kyoto plan. Would it not be better to take a domestic approach, something that the Europeans have done and the Americans are starting to do? They have combined agriculture, environment and rural development under one package. Given these other countries that are not participating, such an approach would probably serve to deal with a lot of the environmental problems in a very positive way, and would not cost $10 billion.

Senator Austin: I wonder if Senator Gustafson could help me by asking a supplementary question so I may understand his first question better.

Senator Gustafson: It is a known fact that the European Union countries have been dealing with the environmental situation at the local level, within their own countries. They have put agriculture, environment and rural development in one package in order to do something positive to control emissions into the environment.

Does the leader think it would be possible to do something like that in Canada, which would not cost $10 billion, and would have a direct impact on the environmental situation in Canada?

Senator Austin: Honourable senators, I am not clear on the suggestion that Senator Gustafson is making. Is Senator Gustafson talking about institutional combinations or program combinations? Perhaps we could try one more time.

Senator Gustafson: This is a program that has worked very well in European Union countries with their agriculture program and environment program. After all, who could be better custodians of the land than the farmers, than agriculture? Of course, Europe has capitalized on that, and the Americans are starting to capitalize on it.

Senator Austin: I think we are doing that. Project Green, first phase, which is the plan for honouring the Kyoto commitment, requires us to close our greenhouse gas emissions gap by 270 megatons by 2012. The Climate Fund plan is designed to reach a target of between 75 megatons and

115 megatons. Announced in the budget for 2005, the Climate Fund is a market-based institution for the purchase of emission reductions and removals, and the purchase will be of greenhouse gas reductions from farmers, business communities, Canadians and other innovators. The package is addressing the total community, as far as I understand it.

Senator Gustafson: The government does not have a program to address, for instance, lands that might not be totally suitable for grain farming. The government could put in place a program that would turn that land into grassland, or something that would be environmentally sound and work for the benefit, not only of the farmer, but of all Canadians.

Senator Austin: I will send that comment to the Minister of the Environment.

TRANSPORT

REPORT OF FEDERAL ADVISORY COMMITTEE ON MARINE ATLANTIC FERRY SERVICE

Hon. Ethel Cochrane: Honourable senators, my question is for the Leader of the Government in the Senate. It concerns the federal advisory committee that has reviewed the Marine Atlantic Ferry Service between North Sydney, Nova Scotia and my province of Newfoundland and Labrador.

• (1410)

The committee's final report was scheduled to be submitted to Minister of Transport Jean Lapierre on April 1. Almost three weeks have passed since that date, but the report's findings have not yet been made public.

Would the Leader of the Government in the Senate make inquiries and inform us when the contents of this report will be released?

Hon. Jack Austin (Leader of the Government): Honourable senator, I certainly shall.

Senator Cochrane: Honourable senators, the contents of this report are in respect of an area of great concern. The people who will be affected in that region in my province have been contacting me over the past weeks. They are mainly from rural communities, as are others who are concerned from the other Atlantic provinces. There will be a great deal of uncertainty surrounding any recommendations that the federal advisory committee may make in the areas of privatization, downsizing and outsourcing. Coming from rural Newfoundland as I do, I can certainly appreciate how serious those three particular topics are.

If the Department of Transport cannot commit to a firm date on releasing this report to the public, could it at least give us the assurance that the report will be released as quickly as possible?

Senator Austin: As I indicated, I will pursue an answer to the honourable senator's question.

PRIME MINISTER

SPONSORSHIP PROGRAM— INVOLVEMENT IN AWARDING OF CONTRACTS

Hon. Gerry St. Germain: Honourable senators, my question is to the Leader of the Government in the Senate. Last Monday, Mr. Warren Kinsella testified before the Public Accounts Committee of the other place that, during the time that he worked for then Public Works Minister David Dingwall there was a dispute involving a contract, and that Paul Martin "phoned me at my home to express his annoyance with what was taking place."

To the knowledge of the Leader of the Government, does the Prime Minister intend to stick by his story that he did not get involved in the awarding of federal public contracts? If he intends to stick by this story, are we to believe that he did not know what was going on in his own office?

Hon. Jack Austin (Leader of the Government): As I said yesterday, the Prime Minister gave his evidence to the Gomery commission.

Senator St. Germain: Honourable senators, Monday's testimony before the Public Accounts Committee boils down to the fact that the Prime Minister knew that the contracts were possibly rigged to favour a certain firm, that he knew that there were claims of bad behaviour involving contracts for a firm closely tied to his leadership campaign and that he threatened to quit as Minister of Finance if his top adviser was disciplined over the matter.

What explanation does the Leader of the Government have for testimony of this nature that is not before the Gomery inquiry? This was evidence taken before the Public Accounts Committee in the other place.

Senator Austin: That is where it should stay, honourable senators, until that committee presents its report.

Senator St. Germain: Honourable senators, I hear what the Leader of the Government in the Senate is saying, but Canadians across this country, who are asking questions of many of us of what is going on here in Ottawa, deserve an answer.

Senator Austin: Honourable senators, the best source of information on this topic is, of course, the principals in the other place. I cannot stand at a distance, with no personal knowledge of these events, and make any comments.

HEALTH

COMPENSATION TO HEPATITIS C VICTIMS

Hon. Wilbert J. Keon: I have a question for the Leader of the Government in the Senate. Honourable senators, on November 22, 2004, the Minister of Health said that the federal government would begin negotiations with the roughly 5,000 tainted blood victims who had been initially excluded from financial compensation, specifically those infected with

Hepatitis C prior to 1986 and after 1990. Five months have passed since the federal government announced this policy reversal, but it is not clear that these people and their families are any closer to receiving the compensation that they are clearly owed. Could the Leader of the Government in the Senate update us on the progress of this situation?

Hon. Jack Austin (Leader of the Government): Honourable senators, there are various questions relating to the Hepatitis C victims who have not been the subject of compensation. I believe those are people who were infected prior to 1986 and after 1990. Their entitlement and compensation is an ongoing matter with the government, and negotiations between the government and legal counsel representing those people are very active.

As I have answered in the past with respect to the status of the Hepatitis C victims who became infected after we were made aware — "we" being the responsible authorities — that there might be tainted blood and that they might be at risk, the funds transferred to them are being held in a court trust. Those funds are apparently more than adequate to deal with any compensation claims that such people may have.

One question is whether there are funds in that account that counsel for the people infected between 1986 and 1990 are prepared to see released to other victims.

Senator Keon: Honourable senators, we have heard that the federal government is waiting until June to learn if there is a surplus of the money referred to. However, if the federal government chose to, it could provide compensation to all Hepatitis C victims without further delay. I do not quite understand how the money would go back, but the government could certainly compensate them now, should it choose to do so.

Would the Honourable Leader of the Government in the Senate make inquiries as to whether the government might choose to do this because, as the leader knows, the government is now living in some uncertain times and these people may get lost in the shuffle.

Senator Austin: I certainly will make further inquiries.

MS. JILL ANNE JOSEPH

CLERK AT THE TABLE

The Hon. the Speaker: Honourable senators, before going to Orders of the Day, I would like to draw your attention to the presence at the clerk's table of Ms. Jill Anne Joseph, Deputy Principal Clerk, and, in particular, draw to your attention the fact that this is the first day on which she has served as a table officer.

Ms. Joseph began her career in the Senate in 1990, and was appointed Deputy Principal Clerk in February of 2004.

It is good to see you at the table.

ORDERS OF THE DAY

BUDGET IMPLEMENTATION BILL, 2004, NO. 2

SECOND READING—DEBATE SUSPENDED

On the Order:

> Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Moore, for the second reading of Bill C-33, a second Act to implement certain provisions of the budget tabled in Parliament on March 23, 2004.

Hon. Donald H. Oliver: Honourable senators, I am pleased to rise today to join the debate on Bill C-33, to implement certain provisions of the budget tabled in Parliament on March 23, 2004.

This bill passed the House of Commons on February 25, 2005, and covers many different statutes. For instance, it amends the Air Travellers Security Charge Act and the First Nations Goods and Services Tax Act. It also amends many sections of the Income Tax Act.

• (1420)

Today, honourable senators, I wish to deal with only one element of one of those acts, which is an important piece of government legislation, and that is the section that deals with what is called the GAAR, the general anti-avoidance rules.

In the summary to Bill C-33, the Department of Finance says that it brought in an amendment to the GAAR to:

> ... ensure that the General Anti-Avoidance Rules in the *Income Tax Act* apply to transactions effected through a misuse or abuse of the *Income Tax Regulations*, a tax treaty or other federal legislation;

When the Department of Finance proposed amendments to the GAAR for the March 23, 2004 federal budget, they stated that the changes were intended by them to address the interaction between the GAAR and Canada's tax treaties. Honourable senators, there is only one issue in relation to the GAAR that I wish to briefly discuss today, and that is the doctrine of retroactivity.

The GAAR was enacted in 1998 to give the Canada Revenue Agency, the agency, a broad power to recharacterize transactions which fully respect the requirements of the Income Tax Act, but which are nonetheless considered by the agency to be avoidance transactions. It is important to note that the GAAR can only be invoked by the agency if it contends in the particular case that the specific provisions of the act have been misused, or that there has been an abuse of the act when read as a whole.

The Department of Finance, in some of their writings and when they met with me in my office, alleged that the government has maintained, since the inception of the GAAR, that it applies to Canada's tax treaties. However, many senior lawyers, chartered accountants and other practitioners and scholars have argued

since day one that the GAAR did not apply to Canada's tax treaties. Indeed, with respect to the income tax regulations, two lower court decisions have held that the GAAR did not apply to the income tax regulations.

These decisions came as a surprise to the Finance Department, in particular the fact that a court ruled in the way that it did, which was different from what they had intended, so they decided to completely change and restate the law. Is this our Canadian way, particularly when it is an attempt to do it retroactively?

Honourable senators, I had the privilege of meeting with two of the architects of this particular amendment, Mr. Leonard Farber, General Director, Legislation Tax Policy Branch, Department of Finance Canada, and Mr. Brian J. Ernewein, Director, Tax Legislation Division, Tax Policy Branch, Department of Finance Canada. When they came to meet with me, they outlined the government position in detail, which I wish to restate now.

To eliminate any doubt regarding these issues, the 2004 budget proposed legislative action to clarify the long-standing position of Canadian tax authorities that the GAAR applies to abusive tax avoidance, whether the ITA, the ITRs or Canada's tax treaties are involved. They said to me that there is general support for making this change, but some have challenged the application of the measure to past transactions. However, they state that the budget proposal reflects the view that this measure is "clarifying" in nature and, therefore, appropriately applies as of the inception of the GAAR back in 1988.

Those who challenge this action are essentially arguing that the intent of Parliament in introducing the GAAR in 1988 was to preclude tax avoidance that abused only the rules in the ITA, but not through the ITRs or the tax treaties. It is difficult to presume that this could have been the intent of Parliament.

Mr. Farber also told me that a number of the tax avoidance cases that are being challenged under the GAAR by the Canada Revenue Agency, or CRA, involve schemes such as those identified by the Auditor General in which Canadian residents utilized trusts constituted in treaty countries to shelter income and gains from Canadian taxation. The Auditor General's 2001 report identified 55 cases involving $800 million in capital gains, they said. Since that report, the CRA has identified approximately 150 additional cases. He told me that significant tax revenues are, therefore, at stake.

They also told me that the Standing Committee on Public Accounts recommended in 1995 that the government introduce retroactive legislation in appropriate cases, and that the Department of Finance develop criteria to be followed in exercising the government's prerogative to introduce retroactive tax legislation. Honourable senators, I have not had an opportunity to check those recommendations, but it is to be hoped that the department will produce them when its officials appear before the committee.

They also said, in response to the committee's recommendation, that the department deposited with the Clerk of the Senate a response listing relevant criteria to be considered in this regard; that the amendments reflect a long-standing and well-known interpretation of the law by the CRA, reflecting a clear and well-known policy intent to prevent a windfall benefit to certain taxpayers; and that these measures are necessary to preserve the stability of the government's revenue base and to correct ambiguous or deficient provisions that are not in accordance with the object of the act.

It is my contention that these retroactive amendments do not reflect a long-standing and well-known interpretation of the law by the CRA. Retroactivity should not be the means by which the government protects its revenue base.

Honourable senators, I wanted to set forth the government's case in detail so that I can present both sides of this issue.

There are some extremely strong arguments that differ materially from the position of the federal Finance Department. One of the first issues I wish to deal with is what in law we call the burden of proof. Who has the obligation to establish what, and what is the burden on the department which makes the laws? Clearly, the burden is to make law that is clear enough for everyone to understand. There is a well-known interpretation device that any uncertainty should be construed in favour of the taxpayer.

Contrary to what the department says, the ambiguity of the government's language has given rise to very much tax litigation. In a recent consideration of the GAAR, the Federal Court of Appeal articulated "the clear and unambiguous standard." It was the court's view that the agency can only invoke the GAAR successfully if it shows that the transaction or transactions failed to respect an obviously demonstrable tax policy. In the court's view, it is the agency which bears the burden to satisfy the clear and unambiguous standard.

The Supreme Court of Canada has yet to hear its first GAAR case. One was presented in March, but there is no decision as yet on that case. It would deal with the clear and unambiguous standard.

Next, I would like to say a few words about the doctrine of paramountcy. Canada has entered into tax treaties with more than 80 countries. Each such treaty has been incorporated into Canadian law by an act of Parliament that contains a paramountcy clause. The paramountcy clause states that the provisions of the treaty override other legislative enactments of the Parliament of Canada to the extent of conflict. In particular, by virtue of the paramountcy clause, the provisions of a tax treaty override provisions of the Income Tax Act.

By way of example, the paramountcy clause in the implementing legislation giving effect to the Canada-Czech Republic Income Tax Convention entered into in 2001 reads as follows:

> In the event of any inconsistency between the provisions of the Canada-Czech Republic Income Tax Convention and the provisions of any other law, the provisions of the Canada-Czech Republic Income Tax Convention prevail to the extent of inconsistency.

By way of exception, the paramountcy clause is itself expressly overridden in a very limited number of instances by the provisions of yet another statute, namely the Income Tax —

The Hon. The Speaker: Senator Oliver, I am sorry to interrupt —

Debate suspended.

BUSINESS OF THE SENATE

The Hon. the Speaker: I am sorry to interrupt the Honourable Senator Oliver, but, it being 2:30 p.m., pursuant to the order adopted by the Senate on April 19, 2005, I must interrupt the proceedings for the purpose of taking the standing vote on the motion of the Honourable Senator Rompkey for the third reading of Bill S-18.

The bell to call in the senators will be sounded for 15 minutes. The vote will take place at 2:45 p.m.

Call in the senators.

• (1440)

STATISTICS ACT

BILL TO AMEND—THIRD READING

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.

Motion agreed to and bill read third time and passed on the following division:

YEAS

THE HONOURABLE SENATORS

Adams	Lapointe
Austin	Lavigne
Bacon	Léger
Bryden	Losier-Cool
Callbeck	Maheu
Carstairs	Mahovlich
Chaput	Massicotte
Christensen	McCoy
Cook	Mercer
Corbin	Milne
Cordy	Mitchell
Cowan	Murray
Day	Nancy Ruth
Downe	Pearson
Dyck	Pépin
Eggleton	Peterson
Fairbairn	Phalen
Ferretti Barth	Pitfield
Finnerty	Poulin
Furey	Poy
Gill	Ringuette
Hervieux-Payette	Robichaud
Hubley	Rompkey
Jaffer	Smith
Joyal	Tardif—51
Kirby	

NAYS

THE HONOURABLE SENATORS

Angus	Lynch-Staunton
Buchanan	Moore
Cochrane	Nolin
Comeau	Oliver
Cools	Plamondon
Di Nino	Prud'homme
Keon	St. Germain
LeBreton	Stratton—16

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

• (1450)

BUDGET IMPLEMENTATION BILL, 2004, NO. 2

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Moore, for the second reading of Bill C-33, a second Act to implement certain provisions of the budget tabled in Parliament on March 23, 2004.

Hon. Donald H. Oliver: Honourable senators, broadly speaking, the Income Tax Conventions Interpretation Act, ITCIA, ensures that specific terms used in tax treaties are interpreted in light of the meaning given those terms in the Income Tax Act, ITA, from time to time rather than solely at the time the treaty was signed.

The treaty implementing legislation takes account of this exception and only this exception. The ITCIA has no application to the interpretation or application of the General Anti-Avoidance Rule, GAAR, contained in section 245 of the ITA; that is, it does not provide that GAAR can be applied to deny taxpayer treaty benefits, notwithstanding the paramountcy clause.

During the 16-year period of 1988 to 2004, there was considerable controversy as to whether and to what extent the GAAR has application in cases where a non-resident is claiming the benefit of a tax treaty. The scholarly literature dealing with this issue was reviewed in a submission made by the joint committee of the Canadian Bar Association and the Canadian Institute of Chartered Accountants, dated July 29, 2004.

I should say, honourable senators, that representatives of both the Canadian Bar Association and the Canadian Institute of Chartered Accountants would like to appear before the committee to have their views heard.

The submission that they made was prepared in response to the budgetary proposal. It shows conclusively, honourable senators, that the overwhelming view of tax experts, including some who participated in the formulation of the GAAR, is that the GAAR cannot be relied upon by the agency in challenging a non-resident taxpayer's entitlement to claim the benefit of a tax treaty, if the non-resident otherwise satisfies the prerequisites to such a claim.

The agency has taken the contrary position. No mention of this position is made, however, in the GAAR Information Circular, IC88-2 and supplement issued by the agency which, to me, would be the logical place for the agency to officially state its position on this important matter.

To date, one decision of the Tax Court of Canada has addressed the issue of the GAAR and tax treaties. The judgment, nine years after the GAAR, contained some statements favourable to the agency's position, but they constitute what lawyers call *obiter dicta*.

In 2004, two cases set down for hearing by the Tax Court of Canada would have addressed this controversy. At the last minute, in both cases, the agency decided not to proceed to trial and settled the matters out of court. In one case, at the pre-trial hearing, Judge Michael Bonner of the Tax Court expressed great scepticism at the agency's claim that the GAAR could be used to deprive a resident of Malta of the benefit of the Canada-Malta Income Tax Agreement. I asked the department why they settled, and I was not informed.

The budgetary proposals are intended to settle this controversy, and draft legislation to amend the GAAR was released by the Department of Finance on September 16, 2004. Both the budgetary measures and the draft legislation propose that the changes in question be retroactive to 1988. Both the budgetary measures and the draft legislation describe the changes in question as intended to "clarify" the application of the GAAR.

Honourable senators, there is strong opinion to suggest that this description of clarifying is both inaccurate and misleading. The changes are intended to address a genuine controversy as to the application of the GAAR to tax treaties, and have the effect of removing from taxpayers presently under assessment or proposed assessment the right to argue the negative position. Retroactive amendment to the GAAR will foreclose this argument. Consequently, these changes to the GAAR are highly destructive of taxpayers' rights, and ignore principles of both fairness and the rule of law.

Honourable senators will know that when the Canada Revenue Agency wants to clarify one of its positions they do it by what are known as information circulars, ICs. There has never been an information circular on this particular GAAR issue.

For purposes of clarity, let me restate my main concern of the retroactivity. During the 17-year period between 1988 and 2005, there has been considerable controversy as to whether the GAAR has application in cases where a taxpayer is claiming the benefit of a tax treaty. Most tax experts, including experts who participate in the GAAR formulation, have concluded that the GAAR cannot be relied upon to deny a taxpayer the benefit of a tax treaty. The agency's position on this issue has never been clear. The issue was not discussed in the information circular of the GAAR, IC88-2 and supplement, published by the agency in 1988 and 1990.

Of more significance, honourable senators, is the following: The Department of Finance is concerned that it may have failed through inaction to address this controversy on a timely basis and it is now attempting to remedy that omission retroactively to 1988, to the detriment of Canadian taxpayers. There may be one remedy, and that is to make it retroactive to the date of the budget, namely, 2004.

Whether the GAAR previously applied to a treaty context is really a matter for the courts.

In conclusion, honourable senators, as a provision of practically universal application, the GAAR already represents a significant encroachment on taxpayers' need for certainty in planning their affairs. Retroactively expanding the GAAR's application 17 years to the date of its enactment, as the Department of Finance proposes, would be an unprecedented exercise of legislative power that threatens to overrule current GAAR jurisprudence and undermine the principles of Canadian tax law.

Honourable senators, there are a number of witnesses who would like to be heard. I am not a tax expert. I hope that when this matter gets to the committee, the committee members will have an opportunity to hear from experts for answers to some of the questions I have raised.

Hon. Serge Joyal: Honourable senators, I will follow in the steps of Senator Oliver by stating outright that I am not a lawyer who specializes in tax legislation or fiscal issues. Those are very complex matters, and are a privileged domain of very learned and sophisticated minds. I have no pretension to that level.

However, I will try to explain how I understand the provisions of the bill under consideration. Retroactivity, by its very nature, is inimical to justice and equity. We understand that in criminal justice. What is legal today cannot, by an act of Parliament, be made illegal tomorrow such that you can be charged for what you did legally yesterday in good faith and in full respect of the law. I think that is understood clearly. That is a principle at the root of common law. It has been applied in both criminal and civil law. It appeals to one's sense of equity and justice.

I am not usually involved in discussions of tax issues in this house, although I try to keep abreast of these matters. Frankly, when the Canadian Bar Association and the Canadian Institute of Chartered Accountants make a compelling case that we should exercise our "sober second thought" on a measure that we are asked to study and act upon, I think we must pause and reflect.

• (1500)

The problem with this legislation is that it widens the scope of GAAR, or the anti-avoidance rules. As I understand it, it would add to the present coverage of GAAR not only the Income Tax Act but also the income tax regulations, the income tax application rules, and any bilateral tax treaty. It widens the

scope. It is not as if we would be legislating retroactively for only one act. We are being requested to legislate retroactively on a wide range of other legal documents or legal obligations that were not contemplated in the original proposal.

We are not being asked here to clarify; we are being asked to widen, and to widen retroactively. It seems to me that we need to pause when we are requested to do that. There might be good reasons, and there is, as I can see in the legislation and administrative rules of the Department of Finance, a context in which this is possible. There is no doubt about that. I have read through some financial administrative rules, and there is a possibility of doing that. However, when it is done, it is always done, or most of the time, in favour of the taxpayer, not in order to retroactively add to the public purse, in this case from 17 years ago, by widening the scope of the original legislation.

The other troubling thing with regard to this measure is that we have been told, "Do not worry, this is just a housekeeping matter. Legislation, especially tax legislation, is very complex, and we want to make more precise for the taxpayer the scope of his or her obligation. We are just helping the taxpayer."

Honourable senators, this is not a new problem. The Department of Finance and Revenue Canada have known of this problem since 1988. I have reviewed the list of all the comments or articles that were written by fiscal and legal experts since 1988 on this very issue of the interpretation of the anti-avoidance rules. There are 18 of them. They have been published more or less each year. It is not a new problem that suddenly they have discovered in their books and they are trying to correct. If the Department of Finance has been passive with the problem for 18 years, they cannot plead ignorance of the problem.

The problem was well identified in an article by Lindsay entitled "The General Anti-Avoidance Rule: Points to Consider," published in the 1988 Toronto conference report of the Canadian Tax Foundation. It was raised again by Arnold and Wilson in an article entitled "The General Anti-Avoidance Rule — Part 3," in the Canadian Tax Journal, 1988. It was raised again by Tremblay in an article entitled "Permanent Establishments in Canada," published again by the Canada Tax Foundation in 1989, and so on in 1993, 1994, 1996, 1997, 1998, 1999, and 2001 to 2004. Repeatedly, the professional community interested in those issues has raised a concern and has commented on this mater. In other words, this is not a new problem. It is an old problem.

What are we requested to do? We are requested to settle cases that are already in court, putting an end to a court case by depriving the persons who are already in court of their right to appeal. We are depriving them of the right to appeal. This is very serious, honourable senators. They have a constitutional right under the Canadian Charter of Rights. When we deprive somebody of the right to continue his or her case in court, a case that is already pending, it is a serious issue and a serious precedent.

We are trying to put an end to what I would call the normal procedure that a taxpayer pursues to get a fair decision on his responsibility to pay and, of course, on the responsibility of the state to raise the money needed to pay for public expenses. We must balance those interests. We are requested, when we adopt tax legislation, to be fair to everybody. We do not want the treasury to be abused or circumvented or to be passed over, but we also want to be fair to the taxpayer. Most Canadians pay taxes, if not all, in indirect taxes and direct taxes and sales taxes and income tax, and everything else that exists in those thick books of fiscal legislation, be it at the provincial, municipal or federal level.

Honourable senators, we must pause and reflect on the principles at stake. Again, I have no intention of putting to you all the implications of what we are requested to do today. There are many, and I cannot cover them in the few minutes I am allocated to address you. However, I sincerely plead that the Standing Senate Committee on National Finance, normally so gifted in terms of representation by members of this honourable house, invite witnesses and experts in this regard. It is an important issue and deals with fundamental principles of our tax system. As much as I understand the overall implication and want to prevent abuse and misuse of the fiscal system, we must be fair, on the whole, when we make corrections or clarifications. We cannot make corrections or clarifications under the guise of trying to be fair to everyone when, in fact, we are adding to the responsibilities of the taxpayer, and especially doing that retroactively and depriving them of their right to continue to fight a case in a higher court. This is a pretty serious matter.

I would hope that the committee will hear from the experts. I have mentioned some of them earlier. They are representatives of the bar. I would like to mention the name of the chair of the National Taxation Section of the Canadian Bar Association, Mr. Brian Carr, or his representative, or the members of his committee, and of course the chair of the taxation committee of the Canadian Institute of Chartered Accountants, Paul Hickey. I would like them to listen to representatives of consumers.

• (1510)

These are complex issues, honourable senators, and we have to put ourselves in the shoes of the taxpayers. If we want the taxpayers to honour their obligation to spontaneously declare their revenue, they have to trust that the system is fair and balanced. This trust is fundamental in maintaining the kind of tax system we have today. Taxpayers do not receive a statement compelling them to pay; they come forward to pay. That is a very important initiative in a free and democratic society because it is based on the confidence that the system will operate justly and equally.

Again, I plead with all members on both sides of the house who will sit on the committee that is to study this legislation to pay deep attention to those principles beyond the complexities of the system, because they are the foundation of tax law in Canada. If our system has worked well up to now, it is because the system was very keen on maintaining those principles in the improvement of the legislation that we are requested to approve today.

Hon. Anne C. Cools: Honourable senators, I wish to thank Senator Joyal for his intervention.

I preface my question by saying that I see present in the chamber today both the deputy chairman and the chairman of the Finance Committee. Perhaps they should give an undertaking that this serious matter and the serious questions that Senator Joyal has raised will be given the proper study and consideration that they deserve.

Senator Joyal raised two large, complex and important issues. One is the phenomenon of retroactivity, which is an ancient principle that goes back in time. It states that no ruler, no government should try to rule retroactively by going back to extinguish the rights, obligations and privileges of citizens. There is wide authority for that principle.

In addition, the honourable senator raised another equally important and complex issue, but not necessarily related. I am referring to the fact that this legislation seems to be ousting the jurisdiction of the courts while simultaneously extinguishing the rights of citizens.

The Hon. the Speaker: Honourable senators, Senator Joyal's time has expired. Does he wish leave to continue?

Senator Joyal: I know that other senators wish to speak, such as the Leader of the Government. I would like him to speak. I would like to listen to him carefully.

If the senator can ask her question, I will try to answer it.

Senator Cools: How are these two separate questions linked in the bill? They are two essentially repugnant characteristics. I am not well acquainted with the bill but am now very interested in it, so I will start doing some work on it.

Perhaps I should wait and ask Senator Austin to show us how those two principles or two aspects are linked, since it is better coming from a government member.

Senator Joyal: I will certainly defer to the presentation of Senator Austin, who probably has a more competent mind in terms of fiscal legislation than do I.

Hon. Jack Austin (Leader of the Government): Honourable senators, I want to thank Senator Oliver and Senator Joyal for their contributions to the debate on Bill C-33 at second reading. They have raised issues that clearly need examination in the Standing Senate Committee on National Finance. I understood from corridor conversation that there seemed to be an impression that the government wanted the bill reported back tonight. That just is not the case. The government would like the bill to go to committee today. The Minister of Finance is available and wants to address the question of anti-avoidance and whether it is retroactive or not retroactive. I hope the opportunity will be given to the Minister of Finance to do so tonight because, as honourable senators know, we will not be in session next week. It would be valuable if the Minister of Finance were questioned and senators then took away his answers and gave them proper consideration.

I want to make it doubly clear that there are other witnesses, such as those from the Canadian Bar Association and the Institute of Chartered Accountants, who have no personal, professional or business interest in this issue. They are experts and should be heard. The proper place for that to happen is in the committee. We can debate here, but unless we are given the facts and the arguments by those who are concerned professionally and those who are government officials and ministers, nothing will advance.

I would ask for the agreement of honourable senators to pass Bill C-33 at second reading now and then refer it to the Standing Senate Committee on National Finance so that the committee can undertake proper consideration of the bill.

Of course, the government would like to have the bill expeditiously. This is a budget bill from 2004 and we have a budget bill from 2005 coming to us some time soon. I cannot give honourable senators the exact day we will receive it. It is in the hands of the other place.

My understanding from the debate so far is that the principal concern is the issue of anti-avoidance: Is it retroactive and is there evidence one way or the other? To some extent it is a question of fact and to some extent it is a question of law. We will see where it goes in the committee.

Honourable senators, I would very much appreciate your consideration for sending the bill to committee today.

Senator Cools: Senator Austin, the agreement of the Senate will be sought momentarily when the question is put.

To come back to the substance of the issue, I would like if the honourable senator could clarify for the record the issue that I have raised, which is the phenomenon of retroactivity. Retroactivity has always been viewed in a parliamentary way as repugnant to Parliament on the grounds that Her Majesty's government cannot simply go around impugning the previous government by attempting to reach back in time to either erase or to alter existing rights. It is a very famous and very well known principle of parliamentary law.

Senator Joyal placed that principle on the record for us today in most eloquent terms, and I would ask the honourable leader to expand on it. Perhaps the government sponsor of the bill did so when he spoke a couple of days ago.

I would also ask the leader to explain the linkages of this retroactive section back to 1988, which is quite profound according to Senator Oliver, and the linkage of that to another equally repugnant phenomenon, which is the process of ousting the jurisdiction of the courts and the rights of the citizen to petition the courts for redress on what the citizen thinks to be a wrong or a grievance.

I know my honourable friend can say that the bill will be studied in committee, but it seems to me that we should work hard to establish, maintain and defend the fact that when issues and questions are raised on the floor of the chamber, they should be answered on the floor of the chamber. I believe that is what the ancient expression "for the record" used to be about.

• (1520)

Could the leader explain that dual aspect? Both aspects are, to my mind, undesirable, but how are they linked in this bill? This is an important question that has been raised by honourable senators. The record should have some clarification.

Senator Austin: Honourable senators, as to the first part of the honourable senator's question, the authority of Parliament to pass legislation is undoubted. If Parliament passes legislation that is expressly retroactive, then there is no bar to Parliament doing so. The question is one of public policy, and that is something that is debated in the circumstances.

However, I am not suggesting that that is what the concern is here with respect to Bill C-33. With respect to Bill C-33, and in particular the anti-avoidance section, it is a question of our looking at the evidence, the facts, and the way in which the Canada Revenue Angency has dealt with the issue, to see whether, indeed, notice was given from 1988 forward in a way that was communicated to the public. The "public" I am referring to here is, in particular, the professional public who deal with tax rules. If there is no evidence, then the committee might come to a conclusion that there is an implied or express retroactivity here.

I thank the honourable senator for the question, but as I said in my contribution a few moments ago, this is a question that is most appropriately put before the committee that can hear the presentations on this subject, and on any other subject that the committee wants to hear, and then come to its conclusions with respect to the situation.

Honourable senators, I would again say that the best forum for consideration of the substantive issues here is the committee itself.

Senator Cools: I thank the honourable leader for that response. Perhaps I am wrong, and if so the leader could correct me. I heard the leader say that the work of this committee is so important that he, as Leader of the Government, is prepared to support the committee in doing a full study, having a full airing on the matter and hearing the witnesses who are so critical and so willing to come forward. I understood the leader to say that he wants the bill to get to the committee today, but that he also wants the committee to give the issue and the bill the kind and quality of study that it so richly deserves.

Senator Austin: Honourable senators, I am not looking for days and weeks of hearings. What I did say is that the committee should hear from professional associations such as the Canadian Bar Association and the Institute of Chartered Accountants. If the committee comes to the conclusion that there exists some other disinterested professional advice with respect to this issue and that they wish to hear it, they will have no objection from me.

Hon. Gerald J. Comeau: My question is to the minister. I was listening while he was explaining how this chamber can, in fact, vote to retroactively change the legislation — and I can understand where that is coming from. However, I am following up on the Honourable Senator Cools' comment that this is a rather repugnant thing, and although I did not hear the Leader of the Government referring to it as repugnant, I consider it repugnant any time we go back in time and change the rules of the game.

What we have before us right at the moment is the voting in principle. In other words, we are saying to the committee that we agree in principle to the concept of retroactivity in the case of this anti-avoidance measure that is being proposed by the government.

I will not get into the question of the anti-avoidance measure. That is left up to the committee. What we are being asked to do as a chamber is to say that we agree, in principle, that we should act retroactively in this case. That is the part that I find repugnant. I equate it to Monday morning quarterbacks deciding to change the rules, and being given the authority to change the rules of the game that was played on the previous Saturday, and having to wait for the Monday morning quarterbacks to tell us what the rules were of the game that has already been played. Fairly soon we would not have anyone watching the game, because it would not make sense any more if the rules were changed at whim by this chamber and the other chamber.

As parliamentarians, we must be very careful when we attempt to reach back in time and start changing rules after the fact. We did that this afternoon with respect to Bill S-18 when we decided to retroactively break a promise made to Canadians some years ago. I think that was the case the leader made in support of Bill S-18. Now we are dealing with the question of retroactive rules to income tax provisions. Senator Joyal made the point very well earlier on that there is a question of trust here. How long can we expect Canadians to trust us as parliamentarians to enact legislation if we start changing the rules after the fact? We must be mindful of that. If we do resort to this extremely repugnant way of enacting laws, we will pay the price in the long run as parliamentarians and as a government.

Senator Austin: A conclusion as to the issue can only begin with a consideration of the issues and arguments that are best presented in the committee. Debate here will not resolve the issues that have been raised by honourable senators. Jumping to conclusions is not warranted on any bill.

Senator Comeau, as an experienced legislator, knows that approval in principle relates to many issues in this bill and that committees have the power to propose amendments. Also, committees are not caught by any rule that says that approval in principle means that nothing can be changed. As the honourable senator knows very well, it is just the contrary. It is parliamentary practice to say, "Go ahead with the principles of this bill, but now let us look at what is really being asked of a legislature in terms of the specific application of those principles."

There is no bar to the committee taking the action it deems appropriate.

Hon. Lowell Murray: Honourable senators, I do have some comments about this bill. I can make them today or I can make them tomorrow. What I will not do is agree to have the bill referred and then dealt with in the committee three hours later. That is an extraordinary request. That the honourable minister

suggests that we give second reading to the bill and refer it to committee today is one issue. If the Senate wants to do that, of course the Senate will do it and I would not stand in the way. What I will stand in the way of is giving leave for the committee to begin its deliberations on this bill tonight. That is not right. That is a practice that we would reserve for the most urgent and extraordinary situations, of which this is not one.

I point out to the minister and to the Senate that we have proceeded at a fairly leisurely pace with this bill. It arrived here — I do not have the date — and some considerable time elapsed before the second reading debate was begun. There is not that kind of urgency.

I am prepared to speak now if the house wishes to hear me further, or I can speak tomorrow. I give notice that I will not agree to waive the rule so that the committee can begin considering this bill tonight. Whether or not the Senate sits next week, which that seems to be one of the factors in the equation, the committee can sit and have even more time next week to hear the Department of Finance and others from outside the government who wish to be heard.

• (1530)

Senator Austin: Honourable senators, I do not have an issue with Senator Murray, but I did say that the Minister of Finance is available tonight to address the principal concern of the chair of the committee, Senator Oliver, as well as Senator Joyal and perhaps other senators. I do not know when the Minister of Finance will be available again. Therefore, I have no concern. I would like the bill to go to committee tonight. I would like the Minister of Finance to be heard. As I said earlier in discussion, the committee can then decide how it wishes to order its business.

The Hon. the Speaker: Before I lose the opportunity to do so, I draw the attention of honourable senators to the presence in the gallery of our former colleague the Honourable Bill Kelly. Welcome back.

Senator Murray: Honourable senators, it would be impossible to improve upon the recital of facts that Senator Oliver gave us in opening the debate for the official opposition, or indeed to improve on the principled intervention of Senator Joyal, so I shall not try. There is some background I would like to place before the Senate and then I will ask senators to reflect on a couple of matters.

Almost exactly two years ago, in the spring of 2003, a budget implementation bill came before us pursuant to the budget of that year. That budget implementation bill, too, contained a retroactive provision.

In that instance, a group of taxpayers — school boards, mostly from Quebec, as I recall it — had gone to court to seek reimbursement of GST that they had paid for the transport of pupils. I think the transport had been contracted out and that was the issue. A second group of taxpayers that intended to go to court came to an agreement with the Crown on what they call a "consent to judgment," that the second group would be governed and abide by the court decision with regard to the first group.

The court decided in favour of the first group of taxpayers, the school boards, whereupon the Department of Finance, in what I think was a shocking display of bad faith, walked away from the agreement and brought in retroactive legislation to ensure that the second group of taxpayers, who were in an identical position as the first, would not be given the reimbursement.

We debated that matter in the Senate. At the Standing Senate Committee on National Finance, we had people such as Roger Tassé, a former Deputy Minister of Justice, and Marc Lalonde, a former Minister of Finance and of Justice. I acknowledge right away that in both cases they were acting professionally and acting for clients, but these two people would not have put their reputations on the line and said the things that they said about the offence against the rule of law unless they had really believed it. We had Simon Potter, the President of the Canadian Bar Association, and other witnesses coming before us to protest against what was being done.

One of the expert witnesses cited another example that had taken place two years previously. What he said about retroactive legislation was that we are trivializing the procedure.

Our old friends Senator Beaudoin and Senator Bolduc weighed in on the question. Senator Moore, I must say, spoke at the time against the retroactive legislation, but it went through.

One of the things that I think we must fear in these cases is that, when a precedent of this kind is established, the department and the government are quick to come back a second and a third time on the basis of the first precedent. This is what is happening here.

The Leader of the Government in the Senate indicates that the question is open as to whether this proposed legislation is retroactive. The bill states:

> The definition "tax treaty" in subsection 248(1) of the Act is deemed, for the purpose of section 245 of the Act, to have come into force on September 13, 1988.

What is that but retroactivity? A bit further on, the bill states:

> Subsections (1) to (3) apply with respect to transactions entered into after September 12, 1988.

On the face of it, that can be nothing but retroactive legislation.

I think Senator Oliver and Senator Joyal told us, but I will repeat it, that two court cases have found that the GAAR does not apply in respect of regulations under the Income Tax Act. That point might and does surprise this layman, but those are the decisions of the court. If the GAAR does not apply to regulations under the Income Tax Act, how much less might it apply to tax treaties that explicitly are paramount to the Income Tax Act?

Honourable senators, I take the strongest objection to the government trying to correct something that they think they should have done in 1988.

We can hear the principled testimony — if he has any — of the Minister of Finance and the officials and from others. I thank the sponsor of the bill for having arranged some private briefings. I think some interested members of the official opposition had a private briefing with officers of the Department of Finance; so did some interested supporters of the government and some interested independent senators, including myself.

I would like honourable senators to reflect for a few moments on this point and on the following: Senator Joyal made a rather intriguing reference to the Charter of Rights and Freedoms. I must say that this layman wondered, reading and hearing about this provision in the bill, whether there is not a Charter issue here and whether there is not an issue relating to the supremacy of the rule of law in this country.

I am incredulous at how a provision such as this could get out of the cabinet process in the first place.

Senator Cools: Yes.

Senator Murray: There is in our system, as honourable senators know, due process. There are checks and balances in the cabinet system when legislative initiatives come forward, and there is a role for the Privy Council Office and for the Treasury Board and various other central agencies. One of the most important checks and balances is the Department of Justice. These people have a statutory, indeed a constitutional, obligation upon them to look at matters and initiatives in the context of the Charter and actually in the context of the Diefenbaker Bill of Rights.

I cannot believe that people in the Department of Justice, indeed their minister, if they are being true to the criteria of their profession, would not raise an objection when they see a provision like this coming up in draft legislation. I cannot believe that they would not say, "Whoa. Retroactive to 17 years?" This is not the way we do business in a country that respects the rule of law.

We will never know what happened in the cabinet process, what objection, if any, was taken. I would hate to think that no objection was taken. I come to the conclusion that the objection was simply overrun. I come to the conclusion that the Department of Finance is out of control. That is the conclusion I come to on matters like this.

The bill gets out of the cabinet process and goes to the House of Commons. That is the next opportunity to do something about it. The bill then goes to committee. I have the transcript, but I will not weary senators with it, as they can look it up.

• (1540)

Mr. Monte Solberg, Official Opposition Finance Critic, raised the matter with officials. He read the provisions, recognized that it was retroactive and asked a couple of questions. He heard from officials that it is simply a clarification. However, it is not just a clarification, even on the face of it. If Mr. Solberg had had an opportunity or had wished to pursue it further, that might have been established. In any event, no one else took it up at committee or in the House of Commons. The bill sailed through the other place and now it is before the Senate. This is the last chance to prevent a serious abuse of power from happening. If the Senate was not meant to act in circumstances of this kind, then I do not know what the Senate was meant to do.

Some Hon. Senators: Hear, hear!

Senator Austin: Honourable senators, Senator Murray asks what officials of the Department of Justice have to say and what the Minister of Finance and his officials have to say. Senator Murray, who is a member of the Senate Finance Committee, has made a speech that would be fascinating at third reading of the bill. However, it is somewhat surprising to hear that his mind is so firmly made up at second reading, when he has not heard evidence on the bill in committee.

Honourable senators, it is a part of tax practices that interpretation bulletins be provided by the department as instructions for departmental interpretation of certain tax provisions. The question is: What notice was given by the Department of National Revenue to taxpayers with respect to this anti-avoidance provision?

I have said that these matters are to be discussed properly at committee where senators are able to hear evidence presented by informed people on the subject matter to assist them in their consideration of the bill. I ask Senator Murray whether he is prepared to see this matter referred to committee tonight, in order to hear the Minister of Finance provide the government's point of view, or at least his point of view as Minister of Finance.

Senator Murray: Honourable senators, there is not an urgency attached to this bill that would justify me, or anyone else, agreeing to second reading now so that the bill can be referred to committee tonight. There is not that kind of urgency. Arrangements can be made with the minister and with the committee. The committee has been extremely accommodating, under Senator Oliver's chairmanship, in the scheduling of government witnesses. I have no objection to referring this bill to committee, if that is what the Senate wishes to do. I have said my piece at second reading and I am not prepared to give leave to have the committee meet a couple of hours from now in order to begin its deliberations. That is not the right way, and there is not that kind of urgency.

Senator Cools: Honourable senators, this situation is becoming more bewildering by the minute. My understanding was that Senator Austin wanted the question put today, and that the vote taken would be on the matter of referring the bill to committee. Senator Austin is proceeding in a unique way by asking that the bill be referred to the Finance Committee tonight in order to hear testimony by the minister. Honourable senators, that proposition cannot be proposed to the chamber within the mechanism that Senator Austin is attempting to use. Senator Austin would have to make an additional motion — an instruction to committee, I believe — that the committee be authorized to sit tonight to hear the Minister of Finance. The house is proceeding in a strange and improper way.

I find the propositions in the bill extremely dubious and highly questionable. I am prepared to let the bill be referred to committee so that it might undergo a thorough and proper hearing. However, I do not understand either the condition being placed on this referral or the procedural way in which it is

being done. Honourable senators, motions and agreements in this place are not made as the result of a casual request of the Leader of the Government in the Senate. Am I misunderstanding something here? Is it the intention of the Leader of the Government to move an additional motion that the committee hear the minister tonight? If that is his intention, he should say it clearly so that the house truly understands the proposition before it.

Senator Austin: Honourable senators, I have no intention of moving a motion that the committee sit tonight. It is normal in this chamber for procedural comity to be referred to.

I never intended such a motion, Senator Cools, because the committee is its own master of procedure.

Senator Cools: Perhaps that decision should be left to the committee.

Senator Austin: That is absolutely right.

Senator Cools: At the same time, since the honourable senator is asking senators to allow the question to be put today and to take a vote on it, perhaps he should give an undertaking to this chamber that he will not try to exert influence over others on his side. One cannot ask Parliament to do something without being clear. The chamber must always know the proposition on which it is voting. I thought the honourable senator made the request in good faith that the bill be referred to committee today. Perhaps it should have remained without conditions. Many senators want to speak to this bill but might be prepared to wait until another time. They do not want to be pre-empted by the minister speaking to the bill before committee tonight. It takes a few hours to prepare for a good meeting with a minister. It is my understanding that ministers are usually willing to appear and are accommodating of schedules when the bills are theirs.

There is a fair agreement to refer the bill to committee, but I am not sure that there is agreement to have the minister appear before the committee tonight.

Senator Lynch-Staunton: Let the committee decide.

Senator Cools: We know what "let the committee decide" means in this case. I merely want to clarify that. It may seem like a small point to many, but it is important. Could the honourable senator clarify that?

Some Hon. Senators: Question!

• (1550)

The Hon. the Speaker: To clarify, Senator Cools was speaking to the bill. I see that Senator Austin is rising.

Senator Austin: Honourable senators, if the committee wishes to meet tonight, it will meet; if it does not wish to meet tonight, it will not meet. It is the business of the committee to decide whether it will meet tonight.

POINT OF ORDER

Hon. Lowell Murray: Honourable senators, I rise on a point of order. The committee is meeting anyway for clause-by-clause consideration of Bill C-30. The rule requires, however, that when a bill is referred to a committee, 24 hours must elapse before it can be taken up.

Hon. John Lynch-Staunton: What rule is that?

Senator Murray: We have such a rule, do we not? Do you mean to tell me that without leave —

Hon. Anne C. Cools: There is a practice.

Senator Lynch-Staunton: Bills have gone within half an hour to committee.

Senator Murray: Bills have gone within half an hour to committee by leave.

Senator Lynch-Staunton: No.

Senator Murray: I stand to be corrected. If you think you can send this bill to committee and start consideration on it tonight, go ahead. However, if it takes leave, I will not grant leave.

Senator Lynch-Staunton: There is no such rule.

The Hon. the Speaker: This is Senator Cools' time. Senator Cools was rising.

Senator Cools: I have the option to raise my concern about hearing the minister tonight as a point of order, but I was trying to be cooperative. Senators know how cooperative I am. This is a very important question. Those of us in this house who are prepared to let the bill go to committee should know with clarity that the committee will not rush to hear the minister tonight because we would like some time to prepare properly for the minister.

I see both the chairman and the deputy chairman of the committee here. Perhaps the two of them could give an undertaking that tonight the committee will move ahead with the business already scheduled and leave the Minister of Finance for another day to give many of us the time to prepare adequately and properly to hear from a minister of Her Majesty.

Hon. Terry Stratton (Deputy Leader of the Opposition): We are rambling all over the place.

Senator Cools: We are not rambling.

Senator Stratton: The committee has decided that they are meeting tonight, and they have also decided to meet with the Minister of Finance. What are we talking about? They have already made that decision.

Senator Cools: How can the committee have already decided to meet the Minister of Finance on this bill when the bill has not been committed to it? In other words, the committee does not have cognizance of the bill. Perhaps the chairman or someone should explain that concept, because committees should not function that way.

Some Hon. Senators: Question!

Senator Murray: Honourable senators, on the point of order, this is the first information I have received to the effect that the committee has already decided to meet to hear the Minister of Finance. That is what the Deputy Leader of the Opposition has told us.

The committee normally meets on Tuesday mornings and Wednesday evenings. I and all members of the committee have received a notice for a committee meeting tonight with an agenda. The agenda item is to proceed to clause-by-clause consideration of Bill C-30. There is nothing on that agenda about hearing the Minister of Finance to open the committee stage hearing on Bill C-33, obviously, since we have not yet given it second reading. I believe it would be highly irregular to add Bill C-33 to the agenda a couple of hours before the committee meets, although I stand to be corrected.

Senator Cools: Perhaps we could get some insight into how the committee took that decision. I am a member of the committee and, as far as I am concerned, this matter was not put before the committee.

Senator Bacon: Ask the chair.

Senator Cools: The chair and deputy chair are being silent.

The Hon. the Speaker: We have a point of order from Senator Murray to which I am prepared to respond. Do others wish to comment on Senator Murray's point of order?

The rules of this place are well established in terms of the relationship of the Senate to its committees. The committees are the masters of their own proceedings. Short of an order from the Senate directing the committee, the committee decides on the conduct of its business. In terms of the discussion I have heard, but in particular of Senator Murray's concern, that is the answer to that question.

I do not know how helpful it is, but I have a quotation from *Beauchesne's Parliamentary Rules & Forms*, 6th Edition, page 222, paragraph 760(3):

> The Speaker has ruled on many occasions that it is not competent for the Speaker to exercise procedural control over committees. Committees are and must remain masters of their own procedure.

One can ignore the reference to the Speaker, but I believe that the words "Committees are and must remain masters of their own procedure" answers the point of order.

Are honourable senators ready for the question?

Some Hon. Senators: Question!

The Hon. the Speaker: No senator rising to speak, accordingly I will put the question.

It was moved by the Honourable Senator Day, seconded by the Honourable Senator Moore, that Bill C-33 be read the second time. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Senator Cools: On division.

Motion agreed to and bill read second time, on division.

REFERRED TO COMMITTEE

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

Hon. Joseph A. Day: Honourable senators, I move that this bill be referred to the Standing Senate Committee on National Finance.

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

Some Hon. Senators: Agreed.

Hon. Anne C. Cools: On division.

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

BUSINESS OF THE SENATE

Hon. Lowell Murray: Honourable senators, on a point of order, having received a notice of a committee meeting tonight to deal with a specific matter, namely, clause-by-clause consideration of Bill C-30, can the chairman tell us, a couple of hours before the committee meets, whether Bill C-33 is now being added to the agenda? If so, why?

The Hon. the Speaker: To clarify, I do not take that intervention as a point of order but rather as a request for information, which is something we do from time to time.

Hon. Jack Austin (Leader of the Government): I was about to object to this concern being raised as a point of order. His Honour has just ruled that the business of the committee is the business of the committee, not the business of this chamber, so this intervention cannot be a point of order. A point of information is up to the chair of the committee to consider.

The Hon. the Speaker: If the chair wishes to comment, this would be the opportunity to do so.

Hon. Donald H. Oliver: Honourable senators, my leadership has spoken on this issue already. Senator Stratton can inform the chamber.

The Hon. the Speaker: That is correct; I did hear that comment.

As we do not have much time, perhaps I should see the clock.

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, perhaps we could deal with Motion No. 1 before we adjourn.

The Hon. the Speaker: Is it agreed, honourable senators, that we proceed to Motion No. 1 before we see the clock?

Hon. Senators: Agreed.

CERTAIN STANDING COMMITTEES AUTHORIZED TO MEET DURING ADJOURNMENT OF THE SENATE

Hon. Bill Rompkey (Deputy Leader of the Government), pursuant to notice of April 19, 2005, moved:

That pursuant to rule 95(3), for the remainder of this session, the Standing Senate Committees on Human Rights, Official Languages, and National Security and Defence be authorized to meet on any Monday which immediately precedes a Tuesday when the Senate is scheduled to sit, even though the Senate may then be adjourned for a period exceeding a week.

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

Motion agreed to.

The Hon. the Speaker: Honourable senators, it being four o'clock, pursuant to the order adopted on November 2, 2004, I declare the Senate adjourned.

The Senate adjourned until Thursday, April 21, 2005, at 1:30 p.m.

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