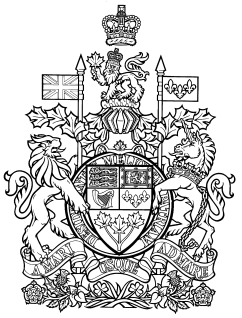

CANADA

# Debates of the Senate

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**OFFICIAL REPORT**
**(HANSARD)**

## Monday, May 16, 2005

**THE HONOURABLE DANIEL HAYS**
**SPEAKER**

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# THE SENATE

**Monday, May 16, 2005**

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

Prayers.

## SENATORS' STATEMENTS

### INTERNATIONAL POLICY STATEMENT

**Hon. Jack Austin (Leader of the Government):** Honourable senators, I wish to draw to your attention the Government of Canada policy document tabled in the Senate on April 19, 2005, entitled "Canada's International Policy Statement — A Role of Pride and Influence in the World."

As announced by the Honourable Pierre Pettigrew, Minister of Foreign Affairs, that statement:

> ...represents Canada's first fully integrated government wide international policy framework. It provides us with the tools and policy focus we need to meet our responsibilities in making a difference in the world.

The Canadian consensus is clear. We need to understand and adapt to the realities of this part of the 21st century. To maintain our prosperity we must remain competitive in global markets and improve our export development by higher levels of productivity and penetration.

To meet these objectives, our strategies include a priority focus on the North American market; more engagement in multilateral processes, including the World Trade Organization and its processes; and closer engagement with the largest developing countries of China, India and Brazil.

Canada will accord an equal priority to respecting human rights and to promoting democracy and the rule of law throughout the global community. We have a real role to play in capacity building in fragile states. In this respect, the Government of Canada is creating the START program, the Stabilization and Reconstruction Task Force, and will back it with a $500-million Global Peace and Security Fund.

Across the government, we are establishing a rapid deployment team that will help us deal with crises and major disasters.

Canada's International Policy Statement brings together our diplomatic, defence, development, trade and investment strategies.

The defence section of the statement, supported by the defence spending increases announced in budget 2005, is the departure point in establishing enhanced military capacity and capability. As National Defence Minister Bill Graham has stated, "The result will be a more relevant, responsive and effective Canadian Forces capable of meeting the increasingly complex needs of the new security environment."

I know honourable senators recognize the importance of the government policy statement. We look forward to a careful examination of its purposes by the Standing Senate Committee on Foreign Affairs and by the Standing Senate Committee on National Security and Defence.

### THE HONOURABLE WILBERT J. KEON

RECOGNITION OF ACHIEVEMENTS

**Hon. Donald H. Oliver:** Honourable senators, in this chamber we have farmers, lawyers, physicians and teachers. We have accountants, journalists, generals, comedians, and even jazz musicians.

We also have a world-renowned heart surgeon, Senator Wilbert Keon, who, in a recent *Ottawa Sun* poll of more than 500 Ottawa residents, was ranked first by respondents aged 45 to 56 as the city's "greatest living hero."

Senator Keon also placed second in the poll of 18-to-34-year-olds, just behind international rock star and Ottawa native Alanis Morissette. The bold headline in the *Sun* read: "If young Ottawa residents just want to rock, middle-aged folks just want to keep on ticking."

Senator Keon is one of the world's leading heart surgeons and researchers in the cardiovascular field. He was the founder of Ottawa's Heart Institute, an international centre of excellence for the diagnosis, treatment, rehabilitation and prevention of heart disease through patient care, research and education.

Since the founding of the Ottawa Heart Institute in 1969, it has become a global leader in the creation of programs designed to prevent heart disease. It is Canada's only complete cardiac centre, with the country's largest artificial heart program.

Honourable senators, it was May 1, 1986, 19 years ago on Sunday, when Dr. Keon became the first Canadian surgeon to successfully perform an artificial heart transplant as a bridge to a human transplant. Though his efforts and abilities, he has helped to prolong the lives of thousands of Canadians.

However, Senator Keon's accomplishments are not limited to Canada's medical field. He has also supported African development by selflessly donating his library of medical textbooks to the Association for Higher Education and Development, AHEAD. Thanks to his generosity, thousands of students at Addis Ababa University in Ethiopia will receive medical instruction in a country that desperately requires it.

Honourable senators, Senator Keon has many titles: doctor, author, professor, philanthropist and parliamentarian. Now he has one more title — he is one of Ottawa's greatest living heroes.

# ROUTINE PROCEEDINGS

## AERONAUTICS ACT

BILL TO AMEND—FIRST READING

**Hon. Bill Rompkey (Deputy Leader of the Government)** presented Bill S-33, to amend the Aeronautics Act and to make consequential amendments to other acts.

Bill read first time.

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

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

## DEPARTMENT OF JUSTICE ACT SUPREME COURT ACT

BILL TO AMEND—FIRST READING

**Hon. Anne C. Cools** presented Bill S-34, to amend the Department of Justice Act and the Supreme Court Act to remove certain doubts with respect to the constitutional role of the Attorney General of Canada and to clarify the constitutional relationship between the Attorney General of Canada and Parliament.

Bill read first time.

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

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

• (1810)

[*Translation*]

## LEGAL AND CONSTITUTIONAL AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY CRIMINAL CODE AS IT RELATES TO ISSUES OF MENTAL HEALTH

**Hon. Lise Bacon:** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to invite, when appropriate, the Minister of Justice and Attorney General for Canada, the Minister of Health, their officials, as well as other witnesses to appear before the committee for the purpose of examining the provisions of the *Criminal Code* related to mental disorder, and in particular to consider the increasing use of the criminal justice system to address issues of mental health; and
>
> That the committee continue to monitor developments on the subject and submit a final report to the Senate no later than May 19, 2006.

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

**Hon. Lise Bacon:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

> That the Standing Senate Committee on Legal and Constitutional Affairs have the power to sit at 4:00 p.m. tomorrow, Tuesday, May 17, 2005, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

[*English*]

**Hon. Terry Stratton (Deputy Leader of the Opposition):** I would expect that the reason for the honourable senator's request is that the minister will be in attendance. Is that correct?

**Senator Bacon:** Yes.

[*Translation*]

**Hon. Marcel Prud'homme:** Honourable senators, I would like to know if there are other committees intending to seek leave to meet while the Senate is sitting. My concern is always the same; that only a few of us would be able to be here to constitute a quorum.

I have no objection to someone seconding Senator Bacon's motion, but I am being a bit daring in asking questions not related directly to her request. What I would like to know is whether several committees are intending to meet tomorrow while the Senate is sitting.

I do not know what is happening on the Hill. I do not let myself get stirred up about things that might happen — it is pure speculation. I wonder how leave can be sought to meet in connection with a bill that has not yet been introduced. This is a bill that has just been passed in the House of Commons and most definitely has not yet made it to the Senate.

I would like Senator Bacon to confirm that we are indeed talking about the bill to which I am referring.

**Senator Bacon:** Honourable senators, I am no more concerned than the senator is, but I am sufficiently realistic to realize that, if the order is adopted, we will need to meet tomorrow at 4 p.m.

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

**Some Hon. Senators:** Yes.

Motion agreed to, on division.

## INFLUENCE OF CULTURE

NOTICE OF INQUIRY

**Hon. Viola Léger:** Honourable senators, I give notice that, on May 19, 2005:

> I will call the attention of the Senate to the importance of artistic creation to a nation's vitality and the priority the

federal government should give to culture, as defined by UNESCO, in its departments and other agencies under its authority.

[*English*]

# QUESTION PERIOD

## FINANCE

### BUDGET 2005— FUNDS FOR INFRASTRUCTURE PROGRAM

**Hon. Donald H. Oliver:** Honourable senators, my question is for the Leader of the Government in the Senate. I wish to ask the government leader some questions to help me understand some of the numbers and projections in the budget concerning the promised money for infrastructure.

The government is attempting to show and make the case that, if the budget bill dies, the five-year commitments that it has signed for infrastructure will be in jeopardy. However, of the $5 billion in gas tax money promised for infrastructure in the budget, the budget implementation bill, Bill C-43, only delivers $600 million, and this is only for this year.

Could the government leader confirm that the proposed Budget Implementation Bill does not deliver funds necessary to meet the five-year commitments that the government is now making? Could the minister also advise the Senate as to why the government is unwilling to legislate gas tax money beyond the current fiscal year?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, I thank Senator Oliver for his question. I should like to take the honourable senator's question as notice so that I can consult the Minister of Finance to obtain his answer.

## HEALTH

### VIOLATIONS BY PROVINCES OF CANADA HEALTH ACT

**Hon. Marjory LeBreton:** Honourable senators, my question is for the Leader of the Government in the Senate and follows up on a question posed by Senator Keon last week regarding the delivery of health care in our country.

Health Canada has announced that it will fine the Governments of British Columbia, Nova Scotia, and Newfoundland and Labrador for allowing private clinics to operate in their provinces. This announcement has led to speculation as to why some provinces are repeatedly fined for violating the Canada Health Act while other provinces are not penalized, despite the continued presence of private clinics.

Could the Leader of the Government in the Senate describe to us the process by which the Minister of Health decides to fine a province for Canada Health Act violations, in other words, could he define the criteria?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, of course, under the Canada Health Act, the Minister of Finance has the authority to withdraw funds from transfers to provinces as a result of inappropriate actions by those provinces under that legislation. I am not aware that the Minister of Health has said that he would proceed to fine any province. I am aware, however, that the minister has written to provinces asking for discussions with respect to the way in which private clinics operate. Senator LeBreton may be aware that the provinces administer health care. The Government of Canada does not have a separate investigatory process; rather, it relies on information provided by the province in response to its queries.

## FOREIGN AFFAIRS

### SUDAN—RESPONSE TO SITUATION IN DARFUR— ARRANGEMENT BETWEEN GOVERNMENT AND MEMBER OF PARLIAMENT FOR EDMONTON—MILL WOODS—BEAUMONT

**Hon. Gerry St. Germain:** Honourable senators, my question is to the Leader of the Government in the Senate. In recent weeks, we have witnessed a Liberal government that is so desperate to remain in power that it seems to be spending billions of tax dollars to buy support for the next general election. However, even more disturbing is the government's knee-jerk reaction to a major humanitarian crisis, all in the name of currying political favour. The Government of Canada has said that it will send 30 military advisers to Darfur. Last week, that figure rose to 60; now, I believe, the number of military advisers has climbed to 100, along with $170 million in aid.

• (1820)

I also believe there is no ratified UN resolution sanctioning the sending of soldiers, that the Khartoum government along with the African Congress have not been involved in the determination of what Canada could do. Why did the federal government virtually ignore the crisis for two years and then respond only when it seemed politically expedient to member of Parliament Kilgour?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, the honourable senator has his facts wrong. This government has been the leader in dealing with the situation in Sudan, first of all in the south where Canada has been instrumental in assisting in the conclusion of a peace agreement between the government in Khartoum and the people of southern Sudan.

With respect to Darfur, an issue has arisen in the past few months, and Canada has proceeded to respond ahead of all other countries. The African Union was given the mandate by the United Nations to take a position in Darfur and to put troops there. No other country has a UN mandate to be there. Sudan is relying on the position taken by the United Nations with respect to refusing the presence of all military personnel except from the African Union.

Given that this is the case, the Canadian government has been in active cooperation with the African Union. In delivering resources, we have provided transportation for African Union troops. We leased helicopters and provided those helicopters to them. We have put advisers on the ground in neighbouring countries to assist them.

NATO has been asked to give assistance to the African Union. The diplomat Alpha Konare has asked NATO for Canada-type logistical pledges to help Africa ramp up its Darfur force to 12,000 troops and police from the current 2,400. If every NATO member adopts Canada's approach, then the African Union will receive $4 billion in aid and an offer of 2,500 NATO advisers and much-needed equipment.

Honourable senators, the truth is that Canada is playing a strong supporting role and is doing its share in Darfur.

**Some Hon. Senators:** Hear, hear!

**Senator St. Germain:** I do not know why the Liberals are clapping. Canada seems to be leading the parade, yet 300,000 people have died, apparently, since the Prime Minister's last visit. The raping and murdering continues. The Prime Minister has been over there. It was not until David Kilgour made his demand that we had additional advisers put on the ground and an additional $170 million in funding.

Honourable senators, Senator Fairbairn was Leader of the Government in the Senate when I was asking similar questions on Rwanda. I asked her day after day, the same way I am doing now. What is happening is totally unacceptable. NATO went into Serbia. Was it because the people there are White and these are people of colour? Was there an ulterior motive?

Senator Rompkey is shaking his head. Why is it that we are not doing something? Whenever it is Africa, we do nothing. Day after day we stand by and watch the murders and the rapes; we do nothing. Yet when Bill Clinton decided to go into Serbia, we were right there with him. I am not saying that was wrong. Why is it that when Africa is involved, we drop the ball?

Why is it that the government sent two emissaries, both of whom are Liberals? Why not send an independent or an opposition member so that at least the reporting would be perceived as fair? I am not questioning the credibility of Senator Jaffer or Senator Dallaire. Why only Liberals? Is there something this side should know?

**Senator Austin:** Honourable senators, it is very difficult to deal in a rational way with an emotional outburst such as we just heard.

The truth is that the Government of Canada cannot handle Darfur's problems by itself. The truth is that it takes an international agreement. The truth is that the African nations asked the United Nations for a mandate to deal with issues in Africa, and the United Nations responded to the African Union by giving them the mandate. It is the African Union that has the responsibility of organizing resources from the world community. Canada has done its share, and the African Union has said just that. Canada is assisting the African Union in approaching NATO countries to add to Canada's contribution.

Honourable senators, we all share the moral indignation concerning events taking place in Darfur. It is regrettable that the United Nations does not have an instrument that allows an immediate capability to respond. We in Canada are very concerned with Darfur, but the suggestion made by Senator St. Germain that somehow Canada, alone in the world, can carry all the responsibility for dealing with the problems in Darfur is erroneous, to put it nicely.

With respect to the question asked, the government has chosen a career diplomat, Robert Fowler, to lead a task force to review events in Darfur, to review Canada's contribution, and to intercede where possible to ameliorate the situation. We have two honourable senators on this side with expertise in these specific situations, as Senator St. Germain has, I believe, indicated.

The government chooses its advisers as best it can, and it has chosen wisely in this case. I do not know if Senator St. Germain has noticed the adversarial character of Parliament today and the efforts of the party he supports in the other place to vote non-confidence in the government. In our parliamentary process, that is the nature of the Westminster model. It is not likely in these political circumstances, therefore, that the government would choose someone who is determined to bring the government down.

**Senator St. Germain:** I can guarantee that if senators on this side of the chamber were with Senator Jaffer and Senator Dallaire, they would do their duty in a non-confrontational and non-combative way. The honourable leader implies that we cannot get proper representation in this place. We have always said that what they do in the other place stays in that place; what we do here is completely different. I think it is a shame that the senator opposite would put matters in that context.

• (1830)

We are told Robert Fowler is reviewing the events. What will he review — more murder, more rape? We know what is going on there. The Prime Minister was there. Ask Senator Jaffer. I am asking the minister to give us a report. We do not need Mr. Fowler there. If he can help, that is great.

We were talking about emotions. Many issues in this world, honourable senators, require emotions to get something done. We can all sit back on our hands. We did it in 1939, and we have done it at other times. I say to you that this is not a political issue. This is about the lives of people — people who are the same as you and me. They raise their families, go to church and believe in their God. We are told not to get emotional about this situation. If we do not get emotional about this, there is nothing in the world we should ever get emotional about, because they are being murdered and raped. We, in the free world, are basically standing by, saying it is someone else's responsibility. The African Union is not doing the job. Let us get it out of the way and do something proper. Let us take the lead.

**Senator Austin:** Following Senator St. Germain's emotional outburst, I wonder how one would get the African Union out of the way.

**Senator St. Germain:** We went into Serbia with NATO, and we could do the same there, without a question of doubt. If NATO cannot do it, no one can do it, because the greatest powers in the world belong to NATO.

**Senator Austin:** Honourable senators, history will show that even the Europeans, with the war in Yugoslavia going on in their backyard, took no action until President Clinton forced the issue on them. Canada, of course, was with the United States as part of a consortium to deal with that issue.

We are waiting in this case for major country leadership by the United States or Europe. We are not a major power in the world, but we are a power of high human value. I keep repeating to the honourable senator, but he does not want to hear it, that Canada has done more than any other country to assist in Darfur. We have accepted the UN's direction. We assist the African Union in every way we possibly can, and they have shown tremendous appreciation for what we have done.

**Some Hon. Senators:** Hear, hear!

**Senator St. Germain:** We may have done as much as we can, Senator Austin, but are we doing enough? That is the question. I rest my case.

**Senator Austin:** Honourable senators, I wanted to clear up one point that was not made by Senator St. Germain, as he says, of a political nature, because none of the questions he has asked have political character, and that relates to David Kilgour in the other chamber. Canada's decisions with respect to Darfur are made on the situation as we can develop it. So far, the honourable senator may have noticed, Mr. Kilgour has not spoken with approval of Canada's measures.

**Hon. Marcel Prud'homme:** I would like agreement of the Senate on one issue, which is to thank Senator Smith for being present. It is his birthday today.

**Senator Austin:** It is his duty to be present on his birthday.

**Senator Prud'homme:** There is always the possibility of unanimity in the Senate.

[*Translation*]

Was independent MP Carolyn Parrish consulted about joining the group, with Senators Jaffer and Dallaire, on the matter of Darfur?

[*English*]

**Senator Austin:** Honourable senators, that is not a question properly put to me.

## JUSTICE

### SAME-SEX MARRIAGE BILL—SUPPORT OF VATICAN

**Hon. Noël A. Kinsella (Leader of the Opposition):** Honourable senators, the Leader of the Government's colleague, the Minister of Justice, is reported in today's Montreal *Gazette* as stating that he had found a willingness on the part of Vatican officials to listen to his arguments concerning the same-sex marriage bill. Could the minister find out to which officials in the Vatican Mr. Cotler was referring?

**Hon. Jack Austin (Leader of the Government):** We will certainly make inquiries, honourable senators.

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Bill Rompkey (Deputy Leader of the Government):** Honourable senators, I have the honour of presenting two delayed answers to oral questions raised in the Senate. The first is in response to an oral question raised on March 22, 2005, by Senator Kinsella regarding the Halifax Port Authority, cutback in number of patrolling police officers.

[*Translation*]

I also have the answer to an oral question raised by Senator Comeau on May 4, 2005, regarding the protection of inland fisheries.

## PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

### HALIFAX PORT AUTHORITY—CUTBACK IN NUMBER OF PATROLLING POLICE OFFICERS

*(Response to question raised by Hon. Noël A. Kinsella on March 22, 2005)*

The port of Halifax is managed, including its security programs, by an autonomous port authority, and questions relating to security decisions are the responsibility of that authority. Questions relating to the number of Halifax Regional Police Service (HRPS) officers in the port should be directed to the Halifax port authority or the HRPS.

Transport Canada is responsible for developing and administering specific acts and regulations that support security and safety within Canada's marine transportation system, including the ports. This includes the overall responsibility of regulations respecting the transportation of dangerous cargos/goods, ship safety and navigation service regulations.

The Halifax port authority shares in this responsibility by ensuring that port facilities, infrastructures and plans meet the required security standards set by Transport Canada.

The RCMP is responsible to lead criminal investigations at the Halifax port to address threats relating to national security, organized crime and other federal statutes. The RCMP also partners with other organizations, such as the Halifax Regional Police Service, in activities relating to intelligence gathering/analysis, emergency response and interdiction efforts at Canada's ports.

The Canada Border Service Agency (CBSA) is responsible for ensuring that the goods and people entering and exiting the Halifax port are in accordance with Canadian law and do not present a risk to the safety of Canadians. The CBSA conducts activities relating to the

screening and examining of passengers, crew, marine vessels and cargo, and partners with other agencies in intelligence gathering or analysis at Canadian ports.

The Halifax Regional Police Service, as the police force of jurisdiction for the port of Halifax, is responsible for investigating matters under the Criminal Code such as thefts and assaults. The HRPS works closely with federal agencies to promote security within Canada's ports. This work includes assisting with intelligence efforts and acting as first responders in emergency situations.

## FISHERIES AND OCEANS

### FOREIGN FISHING—COMMENTS BY PRIME MINISTER

*(Response to question raised by Hon. Gerald J. Comeau on May 4, 2005)*

As the Prime Minister and the Minister of Fisheries and Oceans have made clear — strengthening international fisheries and oceans governance is necessary — not only on the Nose and Tail of the Grand Banks, it's also necessary in high seas around the world.

During May 1-5, 2005, the Government hosted a major international conference in St. John's, Newfoundland and Labrador, on the *Governance of High Seas Fisheries and the United Nations Fish Agreement — Moving from Words to Action*. This conference was a key activity in Canada's strategy to combat global overfishing and improve international fisheries governance. This conference has launched an international process that will lead to strengthened governance and updated high seas fisheries management.

Prime Minister Paul Martin has lent his full support to this process from the beginning. Cabinet has approved funding for this — $15 million annually in the February budget to combat overfishing, and increase surveillance and monitoring in the NAFO Regulatory Area, and recently an additional $20 million over the next three years to fight this problem and improve international fisheries governance. This priority area is also featured in the Government of Canada's new International Policy Statement. The Prime Minister also demonstrated his commitment to this process by addressing the conference delegates at the opening on May 1, 2005.

Ministers or their representatives from 19 countries outlined a vision for reforming high seas fisheries governance in a Ministerial Declaration. This document was the result of proceedings chaired by Minister Regan at the conference. The Declaration sets a number of political commitments and a strong global consensus to modernize the organizations that we use to manage the world's fish stocks. It sets out the goals we want to achieve and how we want to achieve them as a global community.

In the declaration, ministers urged all states to ratify international agreements, such as the UN Fish Agreement. They also agreed to modernize the regional fisheries management organizations used to manage high seas fisheries by:

- Making decisions based on sound science;
- Using the precautionary approach to ensure the conservation of fish stocks;
- Ensuring the rules of these organizations are clear, understandable and consistent with international agreements; and
- Enforcing catches and fishing effort to ensure compliant fishing behaviour.

As a follow up to the Ministerial Declaration, there were five workshops where international representatives, academics and ENGOs discussed ecosystems considerations, compliance and enforcement, decision-making processes, balancing capacity and aspirations of developing states and new areas and gaps. A summary report entitled "The Way Forward" was prepared on the main conclusions of these workshops.

The government will be using the Ministerial Declaration and the summary report "The Way Forward" as a roadmap. We will be working with other members of the Northwest Atlantic Fisheries Organization (NAFO) on strengthening NAFO, to improve its ability to manage fish stocks under its jurisdiction, modernize its management practices—including the application of ecosystem-based management and the precautionary approach—and improve compliance and enforcement. The additional $20 million over three years investment recently announced will help us to move forward on a number of fronts, including more scientific research on the Grand Banks, and the creation of a global advocacy campaign to curb overfishing around the world.

We will be taking a number of follow-up initiatives consistent with the objectives of the conference to move toward concrete actions. In addition to NAFO, we will work to make all regional fisheries management organizations and fisheries mechanisms more effective and accountable through modernizing their roles, mandates and approaches. Canada also will seek to foster cooperation and synergies between regional fisheries management organizations to take action on areas of mutual concern, such as Illegal, Unreported and Unregulated (IUU) Fishing. Given the diverse capacities of regional organizations to take on these challenges, a rigorous international regime cannot be expected to emerge within five years, but will take ongoing efforts.

Other delegations also announced specific steps that they will be taking in the next two years to follow up on the commitments in the Ministerial Declaration. These steps are outlined in the summary report.

In addition to the foregoing, the Advisory Panel on the Management of Straddling Stocks in the Northwest Atlantic, which Minister Regan established in December 2004, is expected to report to the minister in early June. The conclusions and recommendations of the Panel will be important as we move forward.

[*English*]

# ORDERS OF THE DAY

## CRIMINAL CODE

### BILL TO AMEND—THIRD READING

**Hon. Catherine S. Callbeck** moved third reading of Bill C-10, to amend the Criminal Code (mental disorder) and to make consequential amendments to other Acts.

**An Hon. Senator:** Question!

**Senator Prud'homme:** Question!

**The Hon. the Speaker:** Some senators are rising.

**Hon. A. Raynell Andreychuk:** Honourable senators, I do want to put a few comments on the record with respect to Bill C-10. This bill is in response to a bill that was passed in 1992 when a bold step forward was taken on how we handle those with mental illnesses or mental disabilities in courtrooms across Canada. There was a review process built into that bill. The review did not occur when it should have; there was some time delay. However, as I said in my initial speech, I give credit to the House of Commons committee for bringing forward witnesses and for analyzing the new changes that were being proposed with respect to this procedure.

In our study in the Standing Senate Committee on Legal and Constitutional Affairs, a number of points came home to me, and I think they are worthy of note. The first is that our courts are being used as an answer to the needs of the mentally ill. In our zeal and zest to release those from our mental institutions who perhaps could have had the benefit of other resources and been handled in other ways, we have put them into our communities without proper resources. We heard that those with mental disabilities often did not have housing and the support and supervision that they needed to cope in the community. Therefore, mental health issues continued to plague these people to the point where they were coming into conflict with the law. They were ending up before the courts rather than being channelled to an institution or to medical supervisors who could help them.

We created victims of people who suffer from a mental incapacity that precluded them from knowing right from wrong, in some cases, or from functioning appropriately, in other cases. We should have realized that we would need more resources in the community if we did not want to find these people before the criminal law system. We did not afford them what a modern society should do for its citizens, at least those citizens who are least able to help themselves. In fact, we reduced the number of health facilities over the last number of decades, and as a result, those who needed them most suffered most.

We created a second category of victims — those who found themselves in conflict with those who had disabilities. Some of those people lost their lives, some were raped, some were assaulted and others were affronted in less serious ways. These people suffered unnecessary and often long-term debilitating conditions. They could not cope with their lives as a result of being impacted by a person who could not cope with life in the community. In this proposed legislation, we were dealing with two sets of circumstances and two sets of victims.

• (1840)

Bill C-10 is a fair and balanced attempt between the mentally handicapped person and the person who is the victim. There was some discussion as to whether victim impact statements would be appropriate. In my opinion, victim impact statements in a mental review situation are appropriate. If these reviews are harmful in any way to accused persons who find themselves the subject of a review process, then the review board or the court in the first instance could opt to not allow victim impact statements. However, the chairman of the review board came before us and said that he could contemplate few cases where a victim impact statement would not be in the best interests of the person with the mental disability as well as the victim.

We found that 80 per cent of victims of those who come in conflict with the law and have a mental disability are either family members, friends, close associates or neighbours. It was found that most often there had been a prior relationship between those involved and that that relationship, in all likelihood, continues. Therefore, it is not as traumatic as it would appear at first blush. While there may be some legal arguments to be made against it, in weighing the information it would appear that the victim impact statement is necessary, and in some cases even for the rehabilitation of the person who was the subject of the review. However, the victim does need to go through the process of knowing where this person will be and how he will be handled if the rehabilitation is to be appropriate.

Honourable senators, I believe that we are moving in the right direction to take away the need for constant reviews when we know that the person's condition will not change or vary and the person will not recover. In such cases, an absolute discharge could be given by review boards, which is the appropriate measure.

I will not repeat what was said by witnesses before the committee. Valid points were made. I thank the Honourable Senator Bacon, Chair of the Legal Affairs Committee, for extending the hearings so that members could hear from the Barreau du Québec and many others on the legal points of Bill C-10. No doubt this bill could be and should be improved, because understanding mental illness and how its conditions can adapt is an ongoing process. We must continue to review our legislation to ensure that we are doing our best for those who come into conflict with the law.

Honourable senators, the criminal court system is becoming the repository for all other ills in society. When we fail in our social services, people inevitably come before the courts because they are static. When one comes in conflict with the law, one will be dealt with. This is not the way in which society should move forward; in fact, it is a regression.

We use the youth court system rather than provide preventive services early on in the lives of young people. We have more young people in conflict with the law. We have an increase of people with mental problems before the courts because they do not have access to the medical facilities and treatment that they need. This situation cannot continue. We are a modern, advanced society with an excellent social safety net, but that net has too many holes in it through which many individuals fall, and the only place to land is in court. This cannot continue.

I am pleased that the committee will continue to monitor this situation and be a signal to government that the current system cannot continue to expand the options under the Criminal Code and treat as criminal acts behaviour that should be treated in other arenas. I am also pleased to know that the Standing Senate Committee on Social Affairs, Science and Technology is looking into mental illness as well. Perhaps the two committees will be able to shed some light on the issues and develop possible recommendations to pressure the government into dealing with the matter.

We have too many categories of victims in society. We need to exercise more preventive services and work with the provinces to develop better ways to look after people. Perhaps then we would not put such a strain on the courts and we would not have such an outcry from people to toughen the criminal justice system. We would allow the criminal justice system to do what it is supposed to do. We would not have to hear the kind of testimony that we heard before the Standing Senate Committee on Legal and Constitutional Affairs in respect of Bill C-10.

Honourable senators, Bill C-10 is a good attempt. It was amended in the other place and we need to follow it through. Bill C-10 is not a problem; rather, the problem is a lack of services.

**The Hon. the Speaker:** Seeing no senator rising, I will put the question.

Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read third time and passed.

## BUSINESS OF THE SENATE

**Hon. Bill Rompkey (Deputy Leader of the Government):** Your Honour, I should like to call the orders in the following sequence: Item No. 3, Bill C-13, and then Item No. 2, Bill S-31.

## CRIMINAL CODE
## DNA IDENTIFICATION ACT
## NATIONAL DEFENCE ACT

### BILL TO AMEND—SECOND READING

**Hon. Landon Pearson** moved second reading of Bill C-13, to amend the Criminal Code, the DNA Identification Act and the National Defence Act.

She said: Honourable senators, I rise to speak in favour of Bill C-13. Canada's DNA data bank legislation was enacted in December 1998 and came into force on June 30, 2000, when the National DNA Databank opened for business.

It is safe to say that DNA was new then, and there were many concerns regarding its use and how the courts would accept the compulsory taking of DNA samples. I remember well the discussions we had on this issue in the Standing Senate Committee on Legal and Constitutional Affairs.

Because of these concerns, great care was taken in the design of the legislation. The definition of "designated offence" is central. The police can only obtain a DNA warrant for a designated offence, only persons who have committed a designated offence are eligible for inclusion in the National DNA Data Bank, and only DNA derived from evidence related to a designated offence may be uploaded into the National DNA Data Bank.

• (1850)

The designated offences are divided for purposes of making a DNA data bank order into primary and secondary designated offences. The distinction between the two categories of designated offences is that the court is required, subject to a limited discretion, to make a DNA data bank order against an offender convicted of a primary designated offence, while, in the case of secondary designated offences, the prosecutor has discretion to seek a DNA data bank order and the court has a broader discretion not to make the order.

The legislation also contains important protection against misuse of DNA profiles. It is an offence to use a DNA profile for any other purpose than the investigation of crimes. The National DNA Data Bank has developed a system of separating the DNA profile from the identifying information. This is the way it works. The bodily sample that is to be analyzed and the identifying information on the offender, which is based on fingerprints, are both identified by the same bar code.

The DNA data bank keeps only the sample and sends the identifying information to the criminal identification branch. The analysis is tracked by bar code; the DNA data bank does not know who the offender is. When there is a match, the data bank advises the criminal identification branch of the bar code and the criminal identification branch identifies the convicted offender.

I understand that the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness in the other place heard from witnesses involved with the British DNA data bank and learned from them that Canada's protections against misuse of DNA profiles are superior to those in existence in the United Kingdom, where they do not separate the profiles from the identifying information.

In *Hendry*, a decision of the Ontario Court of Appeal widely quoted in decisions in other provinces upholding the legislation, the court considered these protections and held the following:

> In balancing the offender's right to privacy and security of the person against the state interests in obtaining the offender's DNA profile, the court must consider the following. The legislation offers significant protections against misuse of the DNA profile information, thus minimizing an improper intrusion into the offender's privacy. Having been convicted of a designated offence, the offender already has a reduced expectation of privacy. In the ordinary case of an adult offender, the procedures for taking the sample have no, or at worst, a minimal impact on the security of the person. Thus, in the case of an ordinary adult offender, there are important state interests served by the DNA data bank and few reasons based on the privacy and security of the person for refusing to make the order.

The existing legislation contains a limited retroactive provision. A DNA sample could be obtained on application to a provincial court judge where a person was a dangerous offender, had committed two murders at different times or two sexual offences at different times.

Today, after almost five years of experience with the legislation, with strong support for the use of DNA by the courts and, I believe, greater appreciation of the potential of DNA to solve crimes and to exonerate the innocent, we have the basis to build on to make greater use of this important tool.

As honourable senators know, the National DNA Data Bank includes a crime scene index, containing DNA profiles derived from bodily substances found at a place where an unsolved crime was committed, and a convicted offenders index, containing the DNA profiles of persons who have been convicted of designated offences.

The DNA data bank works by comparing all new profile entries to all previous ones and determining whether any genetic profiles match. If there is a match between a profile in the convicted offenders index with a crime scene profile, the police are advised of the identity of the convicted offender. The police can then focus their investigation. There may be an innocent explanation for the presence of the offender's DNA, but in many cases the police are able to solve a crime that was otherwise a cold case. Similarly, if there is a match between two profiles in the crime scene index, the police investigating both crimes are advised. They can discuss with one another the evidence they have accumulated in both cases and perhaps their joint work will solve the cases and lead to the arrest of a serial offender.

As of May 9, there were 77,255 profiles entered into the convicted offenders index and 21,424 entered into the crime scene index. There have been 3,270 crime scene-to-offender hits and 408 crime-scene-to-crime-scene hits. In total, the National DNA Data Bank has assisted almost 3,700 police investigations, including 210 murder investigations, 74 attempted murders, 507 sexual assaults and 417 armed robberies.

Honourable senators should also remember that a negative result can be valuable to the police. A DNA sample found at a crime scene can be quickly compared against those in the current data bank, allowing police to narrow their investigation, which will avoid the questioning of past offenders in the data bank who are trying to live normal lives. This process saves valuable time and resources, ensuring greater protection for the public.

Bill C-13 is the fruit of a lengthy process. In August 2001, when the legislation had been in force for little over a year, the Uniform Law Conference passed a number of resolutions calling on the government to consider, in consultation with the provinces and territories and other stakeholders, changes to the DNA data bank legislation on a priority basis. The consultations were delayed until late 2002 as the government dealt with the consequences of 9/11. They were somewhat broader than the resolutions passed by the Uniform Law Conference, but the government found a large consensus to deal with certain issues in advance of the five-year review, which is to take place this year. Specifically, the consultations showed support for the changes recommended by the Uniform Law Conference.

These changes are as follows: One, the inclusion of the historical offences of indecent assault female, indecent assault male, and gross indecency in the list of designated offences; two, the inclusion of those individuals found not criminally responsible by reason of mental disorder within the DNA data bank scheme; three, clarification of the method of compelling the offender's attendance in court at a hearing to determine whether a DNA data bank order should be made; four, the creation of a process that would permit a judge to make a second DNA data bank order where the National DNA Data Bank has declined to process the first one because of police error in completing the forms that must accompany the bodily substance submitted for analysis; five, a creation of mechanisms to require the offender to appear for the purpose of providing a DNA sample; six, the inclusion of persons declared dangerous offenders otherwise than under Part XXIV of the Criminal Code and those offenders convicted of break and enter and commit a sexual offence; and finally, the inclusion of the historical offences of indecent assault female, indecent assault male, and gross indecency in the definition of sexual offence in section 487.055(3) for the purposes of the retroactive scheme.

In addition, there was support during the consultations for the following: First, to add offences to the list of "designated offences" covered by the DNA data bank scheme including organized crime, "participation offences," uttering threats and criminal harassment; second, support to move "robbery" and "break and enter into a dwelling house" offences from the list of secondary designated offences to the list of primary designated offences so as to increase the likelihood that a court would make a DNA data bank order; third, to expand the retroactive scheme; fourth, to create a procedural mechanism to have a DNA data bank order that appears on its face to have been made for a non-designated offence reviewed and, where it is shown the court lacked authority to make the order, to authorize the destruction of the bodily substances taken under its authority; and fifth, to ensure that an offender's DNA profile remains in the DNA data bank until all orders against the offender have been quashed.

All of these changes were contained in Bill C-35, which died on the Order Paper in May 2004. Bill C-13 in turn built on what was in Bill C-35. It proposed significant changes to the list of primary designated offences, including all child pornography offences, sexual exploitation of a person with a disability, Internet luring of a child, living on the avails of prostitution of a person under 18, overcoming resistance to the commission of an offence, breaking and entering into a dwelling house, and extortion.

• (1900)

In addition, Bill C-13, as originally introduced, made additions to the list of secondary designated offences, including criminal harassment, uttering death threats and being unlawfully in a dwelling house.

Clearly, these changes were not made arbitrarily by the government. The changes were made as a result of concerns expressed by the provinces, victims' groups and other stakeholders that serious offences had been omitted from the list. After extensive hearings, all parties in the other place came to an agreement to strengthen even more the DNA legislation, while remaining within the existing framework and respecting Charter rights.

Four major changes have been made. First, a procedure has been developed to allow the data bank to engage in communications, including the exchange of DNA profiles, without identifying information with regional forensic laboratories in cases where the DNA profiles supplied by those laboratories were less than complete and so there is some doubt whether a profile in the DNA data bank is a match.

Second, the retroactive scheme is to be expanded to cover all murderers and sex offenders, as well as persons convicted of manslaughter, who were convicted prior to June 30, 2000, when the proposed legislation came into force, rather than requiring that the offender have committed two murders, two sexual offences or one murder and one sexual offence. The making of the order is not automatic. The Crown will have to apply, and a provincial court judge will have to conclude that it is appropriate in a given case to make the order given the potential danger the offender will represent to society if he or she is released into the community. This amendment will make approximately 4,700 more offenders eligible for the DNA data bank.

The procedure, which has been found to be constitutional, has not been changed. The Crown will have to convince a judge on the basis of the offender's record and the circumstances of the offences committed that the person's DNA should be included in the convicted offenders index. The judge will take into account the entire record.

This expansion of the retroactive scheme does not change the sentence imposed on the person. It is a procedural provision that does not affect day-to-day life if an individual has been paroled. The DNA simply will be on file should the individual commit an offence in the future.

Third, the bill before us contains an amendment to remove judicial discretion with respect to persons convicted of the worst primary designated offences, including murder, attempt to commit murder, manslaughter, assault causing bodily harm, aggravated assault, sexual assault with a weapon, aggravated sexual assault, kidnapping, robbery and extortion. What characterizes these offences is that they are the most egregious of the primary designated offences and they involve terrible acts of violence against the person.

This amendment responds to the concern that, even for the most heinous crimes, the National DNA Data Bank does not appear to be receiving as many profiles as would be expected. It appears that DNA orders are being made in only about half the cases of a primary designated offence conviction. No one is absolutely sure why the limited discretion for making a DNA data bank order appears to have led to an underutilization of the legislation, but the creation of a mandatory category for the worst offences should result in significantly more orders being made.

Fourth, under Bill C-13, all indictable offences under the Criminal Code punishable by a maximum of five years' imprisonment or more would be secondary designated offences. The indictable offences of trafficking, possession for the purpose of trafficking, importing, exporting or production under the Controlled Drugs and Substances Act would also be listed as secondary designated offences.

The choice of a five-year cut-off has constitutional significance in terms of Charter consistency. Five years is not only a recognized borderline in terms of specifying the seriousness of the offence, but it is also the point of demarcation that the Charter specifies in terms of entitlement to trial by jury. Because the order is made on only application to a judge and must consider the nature and circumstances of the offence and the criminal record of the offender, and the application can be made only if the offence has been prosecuted by indictment, it is expected that this change will be Charter consistent.

Honourable senators, this is an overview of the significant improvements to Canada's DNA data bank legislation contained in Bill C-13. The bill does not alter the protections of the Charter rights and privacy protections that have been central to the acceptance of the existing legislation by the courts.

There is no doubt that, if Bill C-13 is adopted, many more DNA data bank orders will be made and this will increase the number of profiles in the convicted offenders index. In addition, the police will be able to obtain DNA warrants for more offences and upload more profiles to the crime scene index. With more profiles in the data bank, there will be more hits and more police investigations assisted. With more offenders identified through their DNA, Canada will be safer.

I urge all honourable senators to give speedy passage to Bill C-13.

[*Translation*]

**Hon. Noël A. Kinsella (Leader of the Opposition):** Honourable senators, I would like to join in the debate at second reading of this bill. In the summary that precedes the text of the bill, we see that it amends the provisions in the Criminal Code respecting the taking of bodily substances for forensic DNA analysis and the inclusion of DNA profiles in the National DNA Data Bank and makes related amendments to the DNA Identification Act and National Defence Act. It clarifies that the forensic DNA analysis of the bodily substances taken from convicted offenders for the purposes of the National DNA Data Bank will be conducted by the Commissioner of the Royal Canadian Mounted Police.

[*English*]

Honourable senators will recall previous legislation covering the use of DNA in criminal investigations, including Bill C-104, which came into effect in 1995. That legislation gave judges the ability to issue a warrant for police to collect biological samples for DNA analysis for use in criminal investigations.

Then we had Bill C-3, the DNA Identification Act, which received Royal Assent in 1998. That legislation established the National DNA Data Bank — the NDDB — the repository for bodily fluid samples obtained from criminals convicted of certain offences for DNA analysis, as well as samples from crime scenes.

We then had Bill S-10, which amended the National Defence Act. Honourable senators will recall that bill received Royal Assent in the year 2000. Under that legislation, military judges could now issue DNA warrants to investigate designated offences by persons subject to the Code of Service Discipline and make DNA data bank orders.

These bills, at the time, were unprecedented in the extent to which they intruded into a person's private information, his or her DNA, his or her genetic code, as it were. This code contains not just distinguishing information such as in a fingerprint, but also information with potentially wide-reaching consequences, information that could one day include predisposition to disease or even perhaps predict behaviour.

Honourable senators, while these bills, which are now statute, did improve the criminal justice system, they raised concerns about a person's right to privacy and right to security. Senator Grafstein stated the following to the Standing Senate Committee on Legal and Constitutional Affairs on November 25, 1998, while discussing the DNA Identification Act:

> ...DNA has the potential to reveal much more about a person than a breath sample, a fingerprint or even a routine blood test. DNA can be a source of great exploitation of the privacy of the individual. Most of us here are concerned that information gathered as a result of DNA testing is used only for the purposes set out in this bill.

To date, these intrusions into a person's privacy have been found constitutional by our courts. The warrant scheme has survived a Charter challenge.

• (1910)

On October 31, 2003, the Supreme Court of Canada in *R. v. S.A.B.* ruled unanimously that seizing bodily samples from a suspect for DNA analysis, pursuant to a DNA warrant issued under the Criminal Code, does not violate the suspect's constitutional rights against unreasonable search and seizure. Madam Justice Louise Arbour wrote:

> The factors that favour the importance of the search for truth ... outweigh the factors that favour protecting the individual against undue compulsion by the state.... On balance, the law provides for a search and seizure of DNA materials that is reasonable.

Honourable senators, we need to be certain that we are not contributing to the erosion of human rights in Canada. In the interests of public security, we have handed over broad powers to authorities of the state at the cost of our human rights. These are powers that we need to introduce very cautiously, because once they are out there, they are very difficult to rein in.

We also need to recognize that democracy is based not only on trust but on verification, justification, accountability and reliability. It is not enough for us to "trust" that authorities will not abuse their powers like some benevolent dictator. We need to have checks and balances in place to ensure that fundamental rights and, in this case, privacy rights are protected.

We are dealing clearly with a scientific field, the sampling and analysis of DNA, which is in a state of flux, with advances being made on a continuous basis. The tiny sample of DNA that today serves only to link a person to a crime scene may tomorrow be capable of yielding a great deal more. The technology used to study DNA is constantly changing and improving. With that in mind, we must be ever vigilant that safeguards and oversight are in place to protect a person's privacy, to protect even those found guilty of crimes from undue invasion of their most basic identifying characteristics.

The Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness in the other place examined this bill and added a number of amendments that they believed strengthened the bill to help ensure it will stand up to a Charter challenge. We in our committee would want to pay special attention to those provisions.

I would like to point out two major amendments. First, judicial discretion remains to permit judges to disallow an application by the Crown for a DNA sample. This is necessary to ensure that the law will survive a constitutional challenge; but for the worst offences, this discretion will be gone.

Second, the bill, as passed by the House of Commons, now includes a retroactive measure, alluded to by Senator Pearson, which will require inmates convicted of a single murder, sexual assault or manslaughter to provide samples for the DNA data bank.

I applaud the hard work of our colleagues in the other place that resulted in these changes. However, I still have concerns regarding the proposed legislation. They are the same concerns that I have had about the use of DNA from the beginning. In 1998, when we were discussing Bill C-3, which created the National DNA Data Bank, I noted:

> The issue for parliamentarians is to determine whether or not DNA analysis will be an instrument that is wielded as a scalpel to deal with those guilty of serious crimes and not used to vilify all in society.

The DNA data bank has put into place several safeguards to help ensure that privacy is protected. We will have to be vigilant in questioning whether they continue to be sufficient to protect the privacy of a convicted offender.

A representative from the Office of the Privacy Commissioner of Canada currently sits on the DNA Data Bank Advisory Committee, and the committee reports annually to the Commissioner of the RCMP. This committee and the representation of the Privacy Commissioner is not enshrined in the bill and may not be sufficient to monitor issues. In fact, the Privacy Commissioner may not have the resources needed to adequately monitor the work at the data bank. Perhaps what is required is a stronger audit authority for the Privacy Commissioner over the DNA data bank in light of the nature of DNA and the potential for abuse.

This issue of privacy becomes more complicated when sharing information with other countries to help solve crimes. Canada has no control over this information once it leaves the country, unless that control is specifically provided for in exchange agreements with other countries. The DNA Identification Act itself deals with this matter in section 6. However, senators may recall that Bruce Phillips, the former Privacy Commissioner, expressed his concerns about the matter when he told our Senate standing committee in 1998:

> With respect to informational exchanges that are made under agreements between the Government of Canada, and not only international but also provincial entities, yes, there is a very serious problem here. This statute, along with many others, authorizes informational exchanges. In many of those cases, we, as an office, have no right or role in their construction to ensure that adequate privacy protection will exist in the hands of the recipient of the information.

Bill C-13 does not touch on this issue at all. I believe this may be an area that we need to revisit. I certainly hope it will be canvassed by the committee examining this bill.

To a certain extent, even the use of DNA is left dangling under this bill. The definition of "forensic DNA analysis" has not changed since the act was first discussed in 1991. Some would argue there is a loophole connected with it that leaves further use of DNA samples open to abuse. The former Privacy Commissioner stated in his testimony on the subject of Bill C-3, which established the National DNA Data Bank, the bill:

> ...does not adequately define what forensic DNA analysis is. It does not, in this bill, specifically limit the use of that information to the identification aspect. It leaves open the possibility of using the information for other things.

Again, this is a matter that merits our attention, and it will need to be reassessed on an ongoing basis.

I understand that due to cost considerations DNA profiles are developed in groups of 36 or so. In other words, there is a bundling of profiles. As a result, it may not be possible to destroy or dispose of one profile without destroying all the profiles that were processed together.

• (1920)

While the techniques will doubtlessly change, in the interim a person who is "finally acquitted of every designated offence in connection with which an order was made" will find that it may not be practically possible for the implementing authorities to comply with the bill that states in clause 18, in proposed subsection 9(2):

> Access to information in the convicted offenders index shall be permanently removed without delay...

The profile remains in place, but the identifying information is gone. Is this sufficient protection for a person's right to privacy? The evidence seems to suggest that it is, because the person is no longer linked to his profile. This is yet another matter that warrants further investigation, which I commit to our colleagues who will sit on the committee and undertake clause-by-clause examination of this bill.

There is also the matter of the backlog in the DNA casework, although Department of Justice officials assured the committee in the other place that there is no backlog at the National DNA Data Bank. However, Bill C-13, especially with the included amendments, will result in an increased workload. If the investigative laboratories where the backlogs exist are unable to handle the increased workload, the intent of the legislation may be compromised, as the work will not be done.

As is usually the case, implementing legislation is insufficient without also ensuring adequate resources. It is crucial that the data bank have adequate resources to do the job that we are asking it to do.

It is worth underscoring that a review of DNA legislation is due to commence later this year. No doubt we will have an opportunity to explore some of these issues further at that time. Therefore, this may be something that our colleagues on the committee that will examine this bill might also factor in. The Senate will have a vital role to play in that larger review and examination, and I look forward to that.

We have underscored a few questions and issues associated with the bill. These issues have presented themselves as we examined other legislation on DNA in the past. Anyone who wishes to examine the record of the Senate's examination of those earlier bills will know that there is a certain corporate understanding of this type of legislation and that we approach this examination with such a background. I know that the honourable senators on the committee examining this bill will canvass the subject matter assiduously and expeditiously.

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

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Pearson, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

[*Translation*]

## HIGHWAY 30 COMPLETION BRIDGES BILL

SECOND READING—DEBATE ADJOURNED

**Hon. Pierre De Bané** moved second reading of Bill S-31, to authorize the construction and maintenance of a bridge over the St. Lawrence River and a bridge over the Beauharnois Canal for the purpose of completing Highway 30.

He said: Honourable senators, I am pleased to rise at second reading of Bill S-31, to authorize the construction of the bridges necessary to complete Highway 30 in the province of Quebec.

The completion of Highway 30 is of great interest to residents of the greater Montreal area, and particularly to residents of the Montérégie and Suroît regions. Between 1968 and 1982, four unconnected sections of Highway 30 were built, since and then, residents of municipalities such as Châteauguay, Beauharnois and Salaberry-de-Valleyfield, not to mention all the truckers who have to go through the Island of Montreal, have been anxiously waiting for the completion of this bypass route. Honourable senators, today the Government of Canada is once again demonstrating its will to complete this major and strategic infrastructure project.

The completion of Highway 30 includes two sections: an eastern section of 13 kilometres, between Candiac and Sainte-Catherine, and a western section of 35 kilometres, between Châteauguay and Vaudreuil-Dorion. This last section also includes the construction of two bridges crossing respectively the St. Lawrence River and the Beauharnois Canal.

Section 5 of the Navigable Waters Protection Act provides that no work shall be built or placed over any navigable waters unless the work and the site and plans thereof have been approved by the Minister of Transport. The bridges necessary to complete Highway 30 fall into that category.

Section 13 of this same act stipulates, however, that no approval of the site or plans of any bridge over the St. Lawrence River or the Beauharnois Canal shall be given. Special legislation is therefore needed to authorize the construction of these two bridges.

Honourable senators, there is nothing new about having new legislation passed to allow the construction of a bridge over the St. Lawrence River. For over 90 years, governments have obtained similar legislation authorizing the construction of other bridges over the St. Lawrence River, including the Pierre-Laporte Bridge, which opened in 1970 near Quebec City; the Louis Hippolyte Lafontaine Tunnel, which was inaugurated in 1967; the Laviolette Bridge in Trois-Rivières, built in 1967; and the Quebec Bridge, which was completed in 1917 and proclaimed an international historic civil engineering site by the Canadian Society for Civil Engineering.

Despite its brevity, this bill is fundamental in order to ensure that the next phases of the project are completed on schedule. Honourable senators, without this bill, there can be no bridges, and without bridges, there can be no Highway 30.

First, this bill authorizes Quebec to construct and maintain a bridge over the St. Lawrence River and a bridge over the Beauharnois Canal.

Second, it authorizes Quebec to construct and maintain any ancillary works required during the construction and maintenance of such bridges and to limit the scope of the project to the location identified for the completion of Highway 30.

[*English*]

Bill S-31 will also assure the Government of Canada the right to oversee the various components of the Highway 30 project that might have an impact on navigation, shipping or any other area of federal jurisdiction.

We will have those assurances because the bill requires Quebec to do four things. First, it must submit to the Minister of Transport for approval the plans and specifications for the bridges and a bathymetric chart of the streams. Second, it must obtain approval from the Governor-in-Council before work may begin for the location of the bridges and ancillary works as well as for their plans and specifications.

• (1930)

Third, it must obtain new approval from the Governor-in-Council for any substantial changes in the location of the two bridges and ancillary works or in the plans and specifications for them. Finally, it must comply with all other applicable federal legislation, including the Navigable Waters Protection Act and the Canadian Environmental Assessment Act.

The shipping industry has long been recognized as a key to the national transportation system and the Canadian economy. Safe and efficient operations will always be vitally important to the transportation of goods.

Honourable senators, every year close to 2,600 commercial vessels travel between Montreal and the Great Lakes through the Beauharnois Canal. Construction of the two bridges needed to complete Highway 30 must protect the navigability of such vessels so that the 29 million tonnes of commodities they transport can arrive safely at their destination.

That said, we have here in Canada a public right to navigation. That right is unwritten; it is a right of common law. If the waters are navigable, everyone has the right to navigate them. The right can only be limited by an act of the Parliament of Canada, such as the Navigable Waters Protection Act or this new bill governing the construction of the two bridges. Such legislation ensures a balance between the public's right to navigate and the need to build works in navigable waters, such as the works required to complete Highway 30.

Finally, honourable senators, in adopting a legislative framework governing the construction of the bridges needed to complete Highway 30, the Government of Canada is fulfilling its commitment to Quebec to ensure the necessary legislation authorizing the construction of the bridges is passed as quickly as possible.

Along with shipping, this bill will also have a major impact on the ground transportation of goods and passengers. Under the Canadian Constitution, roads are a provincial and territorial responsibility. Therefore, Quebec will be responsible for the construction and maintenance of Highway 30, including the bridges over the St. Lawrence River and the Beauharnois Canal. Nevertheless, these works will have to comply with applicable federal and provincial laws and with federal requirements on navigation and navigation's safety.

[*Translation*]

Honourable senators, an efficient, integrated and flexible transportation system is vital to the economic development of the country, the Province of Quebec and the major metropolis of Montreal. Completion of Highway 30 is vital to the efficient movement of people and goods from Eastern Canada, Quebec, Ontario and the United States. This bypass route will thus enable trucks and through traffic to avoid downtown Montreal and save time and money, while reducing congestion on roads and bridges.

Much of our quality of life is moved by road. If the highway network is not operating up to speed, the quality of life of users and residents suffers accordingly. We have only to consider the time wasted by thousands of commuters morning and night or the increased cost of the goods we buy due to the additional time required to deliver them.

Honourable senators, Bill S-31 is a vital stage in the completion of Highway 30, a project that will reduce congestion in the greater Montreal area. The Government of Canada has a commitment to Quebec to have this bill passed, and, in this regard, honourable senators, I strongly urge you to support this initiative, which will permit the continuation of the long-awaited highway segment project.

On motion of Senator Stratton, for Senator Nolin, debate adjourned.

[*English*]

## CANADA GRAIN ACT
## CANADA TRANSPORTATION ACT

### BILL TO AMEND—SECOND READING

**Hon. Grant Mitchell** moved second reading of Bill C-40, to amend the Canada Grain Act and the Canada Transportation Act.

He said: Honourable senators, I am pleased to move second reading of Bill C-40, an act to amend the Canada Grain Act and the Canada Transportation Act. It is a great honour to sponsor a bill, and this is the first bill I have sponsored in the Senate. This bill touches on one of Canada's most important economic sectors, the agriculture and agri-food sector, and, in particular, the Canadian grain sector, which is a success story in its own right.

I am especially honoured to present this bill because it addresses an area of the economy that is of such importance and significance to my home province of Alberta.

As we all know in this place, the Canadian grain industry has worked painstakingly over the years to build a reputation for quality and purity that is the envy of the world. The payoff is a $10-billion industry that creates jobs and prosperity for many Canadians.

Bill C-40 will amend the Canada Grain Act and the Canada Transportation Act in direct response to a WTO Dispute Settlement Body ruling on February 10, 2004. The ruling arose out of a request or, should I say more appropriately, a challenge by the U.S. government for the Dispute Settlement Body to examine two things; the role of the Canadian Wheat Board under GATT and certain trade issues related to the handling and transportation of imported grain. The ruling represented very good news about the Canadian Wheat Board and some entirely manageable news about the grain handling issues.

First, the good news: The Canadian Wheat Board has been the target of a number of challenges by the United States, both at the WTO and NAFTA, and in every case, including this latest ruling, Canada's right to market wheat through the Canadian Wheat Board has been upheld. Once again, we have been exonerated in this view by the most important trading authority, the WTO. The WTO ruled that the Canadian Wheat Board is a fair trader that meets all of its WTO commitments. It went on to rule that the U.S. did not provide any credible evidence whatsoever that the Canadian Wheat Board acts in a manner contrary to Canada's WTO obligations.

A second important point in the ruling was the insistence that Canada be entitled to safeguard and to protect the quality assurance systems that we have developed in the grain sector. These are immensely important. On the other hand, the panel did rule that certain Canadian grain handling practices, specifically around mixing different grains, entry authorization and rail transport, are in fact discriminatory against imported grains. Bill C-40 rectifies these practices and puts Canada in compliance with the ruling without — and I strongly stress "without" — compromising our grain quality assurance systems one iota.

Bill C-40 will bring our treatment of imported grain in line with our treatment of domestic grain, thereby achieving consistency with the national treatment doctrine of the WTO in the following ways: First, certain provisions of the Canada Grain Act will be repealed so that licensed elevator operators will no longer have to have Canadian Grain Commission permission before foreign grain can enter their elevators. That will be accomplished by repealing paragraph 57(c) of the act.

• (1940)

Second, licensed terminal and transfer elevator operators will no longer require Canadian Grain Commission authorization to mix grain of different grades. That will be accomplished by repealing paragraphs 72(1)(a), 72(2) and (3), and section 56 of the Canadian Grain Act regulations.

In addition, certain regulations of the Canadian Grain Act will be written to require that elevator operators report the origin of all grain. If they mix Canadian and foreign grain, they will be required to identify that grain for what it is — mixed. This is designed to ensure that the origin of grain is not misrepresented.

It is essential that Canada continues to have the capacity to assure our buyers that they are getting what they pay for, namely, the consistent high quality they have come to expect from Canadian grain. The Canadian Grain Commission is confident that these changes in no way compromise our ability to do this.

In addition to the amendments to the Canada Grain Act, amendments are required to the revenue cap provisions of the Canadian Transportation Act in order to bring the cap into compliance with the WTO decision. Canadian railways must operate under this cap when they ship grain in Canada. It ultimately puts a limit on how much they can charge for that service under certain circumstances.

Under Bill C-40, the cap will be extended to include foreign grain that is imported into Canada. It will not, however, apply to foreign grain that is imported into Canada, then through Canada and out of Canada to some other destination.

I want to take a moment to acknowledge the hard and expeditious work that has been done in the other place to make sure that this bill was passed quickly and without undue delay. As my honourable colleagues may be aware, there is a good deal of urgency to secure timely passage of this bill because Canada and the U.S. have agreed on a compliance date of August 1, 2005. One might ask, "So what?" Failure to put the required changes in place by this date could open Canada to potential retaliatory action on the part of the United States. This retaliation could be authorized by the WTO as early as October 1, 2005, and would likely take the form of punitive tariffs on Canadian grain exports.

Moreover, as a medium-sized economy, but one so reliant on exports, Canada needs to be vigilant about ensuring other countries abide by the rules-based trading systems, especially in regard to international trade disputes. Failure to comply with this ruling would put Canada in an unaccustomed and uncomfortable position vis-à-vis our trading partners, including the United States. I commend our colleagues in the other place for passing this bill unanimously last week with no debate at both the report stage and third reading.

The grain sector, which includes farmers, elevator operators and other stakeholders, is certainly on side. This is reassuring. It is very much on side in supporting prompt action on Canada's part to comply with this WTO ruling.

On May 4, the Standing Committee on Agriculture and Agri-Food in the other place heard from a number of key stakeholder representatives, including the Grain Growers of Canada, the Western Grain Elevator Association, the Inland Terminal Association of Canada and Canadian Pacific Railway. There were a number of written submissions as well. All stakeholders expressed a common desire to implement the changes as quickly as possible and bring Canada into compliance.

If I could just briefly quote from testimony by Mr. Cam Dahl, representing the Western Grain Elevator Association:

> Western Grain Elevator supports passage of Bill C-40 as quickly as possible... U.S. retaliation would not be in the interest of the Canadian agriculture value chain, and we would wish that the Government of Canada will take the necessary steps to comply with the World Trade Organization ruling.

In addition to the Standing Committee on Agriculture and Agri-Food hearings, the Parliamentary Secretary to the Minister of Agriculture and Agri-Food conducted extensive consultations in January of this year on these changes to the Canadian Grain Act and the Canadian Transportation Act. Farmers, producer organizations, general farm groups, elevator operators, the railways and private grain companies were all consulted. They were broadly supportive of this approach, the approach embodied in Bill C-40, to dealing with the issues outlined in the WTO ruling. There was strong support for Canada to meet its WTO obligations.

Important questions were raised in the committee in the other place, as well as in the consultations, as to whether the changes would result in increased imports of grain from the United States and whether this would impact on the volume of Canadian grain moving to export during peak periods. Would it create undue congestion and in some way disadvantage Canadian grain growers? It is clear that the changes proposed to the Canada Grain Act will not result in increased imports. The situation is

somewhat less clear for the change to the revenue cap in the Transportation Act. However, on balance, the potential for increased imports is not expected to be significant, at least in the short term.

There is potential for U.S. grain to be diverted here to take advantage of lower freight rates which could add to congestion during peak periods. However, grain companies and railways have the flexibility to use commercial pricing to adjust to this if congestion warrants it. This commercial pricing operates within a free market model and therefore would not be in contravention of WTO rulings.

As there is some question about this change in the longer term, stakeholders expressed the need to review the Canada Grain Act and the bill and, as a result, the bill was amended in committee in the other place to provide for such a review. That review is provided to be undertaken within a year of the passage of this bill.

It has been some time since the Canada Grain Act was amended, so the Minister of Agriculture and Agri-Food believes such a review is appropriate and supports its inclusion in the bill before us today.

In closing, I urge honourable senators to support this bill, especially given the urgency that it should be in force in time for the August 1 deadline.

Canada's commitment to meeting our trade obligations will ensure that we can continue to lead by example. Not only does Bill C-40 illustrate Canada's commitment to meeting these obligations, it also holds Canada up as an example for other nations to follow.

Our quick and responsible response to the ruling has, I believe, farther reaching implications for our relations with the United States in particular. At a time when there has been some debate about whether Canada is a good neighbour to the U.S., this is further evidence that in fact we are.

Bill C-40 ensures that our world-class grain quality system continues to support Canada's $10-billion grain industry, an industry that has succeeded on the basis of offering consistent and uniform quality on world markets load after load, year after year. It is the envy of other producers around the world.

In some sense, the changes are secondary to the breakthrough feature of the ruling, which vindicates the operation of the Canadian Wheat Board under GATT. That is extremely important. When it comes to the grain handling and grain transportation aspects of the ruling, we have little reasonable alternative but to implement the changes due to our WTO obligations and the spectre of U.S. retaliation. At the same time, the changes will have been implemented with extensive consultation and with the broad agreement of the industry.

• (1950)

In addition, these changes will result in minimal disruption, no increase in red tape to speak of, and will be the subject of a review within a year. This bill is certainly worthy of our support in the Senate, and I would urge my colleagues to do just that.

[ Senator Mitchell ]

[*Translation*]

**Hon. Terry Stratton (Deputy Leader of the Opposition):** Honourable senators, I want to speak today to Bill C-40, to amend the Canada Grain Act and the Canada Transportation Act.

[*English*]

Bill C-40 amends the Canada Grain Act and the Canada Transportation Act to make minor adjustments to Canada's system for handling and transporting foreign grain and grain products in Canada. These measures reflect a recent decision made by the World Trade Organization Dispute Settlement Body.

The amendments to the Canada Grain Act, the CGA, as outlined in Bill C-40, removes the requirement that authorization must be sought from the Canadian Grain Commission, the CGC, before foreign grain can enter licensed grain elevators. Bill C-40 amends the CGA and the Canada grain regulations to remove requirements that operators of licensed terminals or transfer elevators must seek CGC permission to mix grain.

Also of note, according to government background documents that have accompanied the release of Bill C-40, in place of the previous provisions dealing with foreign and mixed grain, a regulation will be introduced requiring elevator operators to report to the CGC the origin of all grain. If they mix Canadian and foreign grain, that grain will be required to be identified as mixed. According to the government, this regulation is meant to ensure that Canadian grain is not misrepresented.

Also related to the substance of this legislation, Bill C-40 amends the Canada Transportation Act, the CTA, so that the railway revenue cap will be extended to imported grain. I believe CPR expressed concerns about that.

As mentioned, the changes contemplated in Bill C-40 are a response to a decision made by the WTO Dispute Settlement Body on a dispute between Canada and the United States. On March 31, 2003, the American government requested that the WTO examine the consistency of certain activities of the Canadian Wheat Board and other Canadian policies affecting the importation of grain for their adherence to WTO rules. Although the WTO subsequently ruled in favour of Canada on the CWB issue, it ruled for the United States on some aspects of Canada's policies related to the handling and transportation of foreign grain and grain products in Canada.

In response to these rulings, on November 12, 2004, Canada and the U.S. reached an agreement to implement the WTO's decision on grain sector policy issues.

The Conservative Party of Canada supports Canada's adherence to our WTO obligations and maintaining strong multilateral and bilateral trade relations with other countries of the world and the United States. In this regard, the Conservative Party is supportive of the general thrust of Bill C-40. We also understand that there is an issue with respect to the fact that the deadline for Canada to bring itself into compliance with the WTO ruling and the agreement with the United States is August 1, 2005. According to the government:

> ...if Canada does not implement these changes by August 1, 2005, Canada would risk the imposition of retaliatory measures by the U.S. This retaliation would likely take the form of punitive tariffs on Canadian exports to the U.S., although it's difficult to say what value of trade would be affected.

In this regard, the matter of a possible impending election must be considered. What must be remembered, however, is that the chances and risk of retaliatory measures by the U.S. is a constant hazard, regardless of any domestic political events in Canada. As pointed out in the Library of Parliament legislative summary for Bill C-40:

> ...the CWB alone has faced 13 investigations or studies by various arms of the U.S. government. Perhaps more importantly, it appears that the incidence of non-compliance with similar WTO decisions is rising over time. The European Union ambassador to the WTO, Mr. Carlo Trojan, has observed that "the United States has a quite depressing record when it comes to obeying WTO rulings."

It has to be stated that should Canada not comply with the WTO decision within the timeline established at the November agreement, it will not be alone in the league of non-complying countries.

However, with Bill C-40, there is no excuse for Canada to be in this position. After all, when we speak of the tight timeline we are facing, it should be pointed out that it took this government four months from the date of the Canada-U.S. agreement to introduce this legislation which implements the agreement. It is not like this is a very long piece of legislation. After all, Bill C-40 consists of a mere four clauses. This bill is just a few pages long, including the summary and explanatory notes.

Honourable senators, we are in a minority government situation and Paul Martin is well aware that his government could fall at any time, killing all legislation on the Order Paper. He also knows that Parliament rises at the end of June and, as I said earlier, the changes in this bill must be in place by August 1. Why, despite the fact that we are facing an impending election, would it take so long to get this process started? If the bill had progressed through the normal process in the House of Commons, it would have gone through committee hearings and, given the normal process here, we would not have finished this bill until the end of this month or early June. This is a cliff-hanger situation, even without the fear of the government falling. I really question why.

[*Translation*]

However, the fact remains that the machinery of government could have moved slightly faster than it did in order to avoid this legislative suspense.

Honourable senators, it is essential that, for every piece of legislation brought before us, we take the time needed to examine it carefully and with due diligence. The legislative process should not be an afterthought.

[*English*]

I would like to applaud the efforts of the Honourable Conservative Member of Parliament for Haldimand—Norfolk in pushing her amendment through, which will reinforce parliamentary oversight of the legislation. A review of the act with a report to both Houses of Parliament will now be required within a year after this section has come into effect.

The Conservative Party supports Bill C-40, but with the admonishment to this Liberal government to recognize that it should not be playing politics with a bill that has looming deadlines, especially when this government has lost or is in danger of losing the support of Parliament.

**The Hon. the Speaker:** It was moved by the Honourable Senator Mitchell, seconded by the Honourable Senator Downe, that this bill be read the second time.

Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Mitchell, bill referred to the Standing Senate Committee on Agriculture and Forestry.

• (2000)

[*Translation*]

## RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

THIRD REPORT OF COMMITTEE—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Smith, seconded by the Honourable Senator Robichaud, P.C., for the adoption of the third report of the Standing Committee on Rules, Procedures and the Rights of Parliament, (*Conflict of Interest Code for Senators*) tabled in the Senate on May 11, 2005.—(*Honourable Senator Robichaud, P.C.*)

**Hon. Fernand Robichaud:** Honourable senators, last week when I moved that the continuation of the debate be deferred, I was acting on a suggestion by the leadership of the government party and the opposition. Their intention was to ensure that honourable senators had a few days available to them in order to examine the document before speaking this week, if that was their intention.

If I were to speak today, honourable senators, I would speak along the same lines as the committee chair and vice-chair. If it were up to me alone, I would be prepared to vote on this matter immediately. I do, however, believe that some senators would like to have an opportunity to speak, and I encourage them to do so.

[*English*]

**Hon. Marcel Prud'homme:** Honourable senators, I do not wish to speak to the report, but I have a question of definition. The word "family" is well defined in the proposed code, but the word "guest" is not defined. That is my sole concern, without debate. It is important because the matter concerns travel. The word "guest" is used, and I would like to have its definition included in the code. I read the English and French versions of the proposed code last night and found a few small discrepancies. Without a definition of "guest," an honourable member could have difficulty when registering with a guest. Perhaps each person has to register. I would like to know how to proceed.

Senator Joyal will make a great speech on this. He has a good legal mind and perhaps he will provide an answer to this.

**Hon. Serge Joyal:** Honourable senators, I am preparing my notes at the invitation of Senator Robichaud, and I have taken the point raised by Senator Prud'homme. I would like to speak to the report of the Rules Committee tomorrow, when the Senate resumes its sitting. I have reviewed the 26 meetings of the committee, all of which I attended, and in the 15 minutes that will be allotted to me I will share with the house why I support the report.

On motion of Senator Joyal, debate adjourned.

## WORLD HEALTH ORGANIZATION

### MOTION IN SUPPORT OF GOVERNMENT OF TAIWAN REQUEST FOR OBSERVER STATUS— DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Di Nino, seconded by the Honourable Senator Stratton:
>
> That the Senate call on the Government of Canada to support the request of the Government of Taiwan to obtain observer status at the World Health Organization. —(*Honourable Senator Downe*)

**Hon. Percy Downe:** Honourable senators, I rise to give my support to the request of the Government of Taiwan to obtain observer status at the World Health Organization. The World Health Organization is an agency of the United Nations that was created in 1948 with Canada as a founding member. The request from Taiwan has been a matter of debate for many years. On the one hand, it can rightly be seen as a matter of human rights but, on the other hand, the political dimension cannot be ignored. As many honourable senators have done in the past, I call the attention of honourable senators to the preamble of the WHO constitution, which states:

> The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.

Clearly, this highlights the emphasis on health and human rights over the political issue that drives the opposition to Taiwan. In today's globalized world, health is a concern for all people around the world. Diseases do not follow state borders and cannot be confined within them. This reality was seen during the outbreak of SARS and its rapid spread across the world. It is in times such as the SARS outbreak that the need for information sharing and cooperation is highlighted. Taiwan required the assistance of the WHO during this crisis but was unable to receive the full support needed because it was not a member or observer of the WHO. While opposition continues from China, there are precedents in the organization of participants receiving such status. Currently, there are five entities that have observer status in the WHO.

Another important point made by Senator Di Nino in the past is the contribution Taiwan would make to the World Health Organization. Taiwan has a well-established and advanced health system that would provide information and knowledge to the international organization and its members. Rejecting the participation of Taiwan in the WHO puts its population of 23 million at risk, including all the Taiwanese who visit Canada and other parts of the world. There is no reason to take such a risk.

Canada has supported Taiwan's request in the past, as have other countries and organizations such as the United States, Japan and the European Union. On May 27, 2003, the House of Commons passed a resolution in support of the Government of Taiwan's request. On June 12, 2003, this chamber unanimously passed a similar resolution. I speak this evening in the hope that the Senate can once again give support to Taiwan's request for observer status at the WHO.

On motion of Senator Rompkey, debate adjourned.

• (2010)

## PROVINCE OF ALBERTA

### INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Mitchell calling the attention of the Senate to the Province of Alberta and the role it plays in Canada. —(*Honourable Senator Prud'homme, P.C.*)

**Hon. Shirley Maheu:** Honourable senators, I rise to participate in this inquiry — I might say that I was not expecting to do this — in response to a very fine maiden speech of our distinguished new colleague, the Honourable Senator Grant Mitchell.

**Hon. Marcel Prud'homme:** As senators may have noticed, I am more than delighted to give the floor to Senator Maheu, but I point out that this item stands in my name. I had intended to stand this inquiry today, but, as an act of courtesy, of course Senator Maheu may speak. I will take the adjournment when she has completed her comments.

[*Translation*]

**Senator Maheu:** Honourable senators, among the subjects broached by Senator Mitchell, three in particular have incited me to speak. They are the attitude of Quebecers and Albertans toward the Canadian reality, Senate reform, and the importance of the Canadian Charter of Rights and Freedoms in the face of that reality.

[*English*]

I would like to echo Senator Mitchell's comments about the major contribution that Quebec and Quebecers make to our national uniqueness. I thank him for these comments. He reminds us that the Quebec fact promotes positive differences between ourselves and our culturally aggressive southern neighbour, while at the same time the Quebec reality never ceases to enrich our own collective experience.

Senator Mitchell applauds the way in which we Canadians have, in his words, blended minority and collective rights, the way that we have elevated culture and multiculturalism, the way that we are decent and dignified, and the way we have created a judiciary premised upon fairness and justice.

I note in particular his reference to the so-called alienation among a few Canadians toward the Charter of Rights and Freedoms, about which I want to speak especially. I hope that such alienation is of a passing nature. The Charter is still young and human rights continue to evolve at too much of a whirlwind pace for some.

Much of the alienation is generational based. There are, I believe, some remedies to this alienation. The current Chief Justice of Canada declared in 1994 that the passage of Canada's Charter of Rights and Freedoms was the equivalent of a revolution on the scale of the introduction of the metric system, the great medical discoveries of Louis Pasteur, and the invention of penicillin and the laser.

Prior to the Charter's adoption, the courts had the benefit of the Diefenbaker Bill of Rights. We should not forget that this was a noble development and that its text suggested the possibilities of practical and far-reaching consequences.

Unfortunately, the enlightened changes expected were not to be implemented so quickly. During the post-Diefenbaker period, the Supreme Court of Canada was dominated by judicial conservatives, and there were no details in the document itself to save the high purposes of this noble effort from being distilled by these reactionary elements of our top court.

In giving us the Charter, Prime Minister Trudeau successfully remedied the deficiencies of the Diefenbaker document with seven pages of fine print that have forced our senior judges since 1982 to focus more broadly on the great human rights controversies of the day. Of course, this broad focus has enabled the opponents of the evolution of human rights law to pour derision on the Charter. Some of this has come from Alberta, but by no means exclusively from there. As I have said optimistically before in this chamber, the thrust of reactionary elements from an ever-dwindling minority will continue to lead to the impotence of these reactionary interests as we move forward to embrace the natural expansion of human rights.

[*Translation*]

Today, Canadians have great respect for the Charter. It is recognized not only as a symbol, but also as a document of great practical importance. In fact, the Charter is the cornerstone of our national unity. Its message extends to Alberta, Quebec and all of Canada. It is truly an essential force that unites us from coast to coast.

[*English*]

Honourable senators, it says to Canadians that rights are rights are rights. It affirms that not a single Canadian is expected to sit at the back of the bus. To even think of using the notwithstanding clause in a human rights context is indeed an awesome, unwelcome and destructive challenge to our overarching pan-Canadianism.

Still, as Senator Mitchell has mentioned, some Canadians regard the Charter as a thorn of alienation and are eager to claw away at its unifying influence. I have said before in this chamber that our Canadian Constitution, and in particular our Charter, is a living, breathing and evolving document, but at the same time, there are several realities that challenge the ultimate effectiveness of the Charter.

Alienation toward the Charter cuts two ways. On the one hand, there are those in a variety of positions of authority who are incapable of fully embracing the sense of broadly based rights. On the other hand, there is an uneven distribution of the resources that can effectively implement the promises that Charter decisions make. On both hands, these shortcomings stem from geographical, religious, generational, as well as cultural realities and notions. The blending of minority and collective rights is a never-ending work-in-progress.

Senator Mitchell appropriately reaffirms that negative views of Albertans on Charter issues are not monolithic. Every corner of this nation holds socially progressive pan-Canadian views, and Quebecers take a back seat to no one in the socially progressive theatre.

• (2020)

For effective access to the Charter's promise, there are three essential elements that must be present. The first element is organized group support for Charter litigants. That means that such group support must be active, in all parts of Alberta and everywhere else, to challenge Charter-motivated grumbling and blocking. The second element is the financing necessary for Charter appeals by individuals who are not supported by groups; and the third element is the urgent need for the structural renewal of the legal profession to enable Canadians everywhere to enjoy the promise of the Charter. These three elements are the new frontier of the application and expansion of human rights in Canada.

[*Translation*]

Obviously, those who repeatedly pursue Charter remedies to resolve their disputes seem to have greater success.

[*English*]

When poor litigants pursue Charter remedies, they do not fare well because challenges are costly, requiring expensive legal representation, and are very time-consuming. The extent of diversity in the legal profession, particularly in the larger law firms, seems to dictate the degree to which Charter cases are moved forward, particularly when women's or multicultural issues are at stake.

Women promote women's issues. Visible and other minority individuals as legal practitioners promote multiculturalism and a wide range of cultural interests. Here, Senator Mitchell's comment about the blending of minority and collective rights is particularly appropriate.

It seems to be a law of nature that renewal occurs when there is a critical mass that seeks change. Most likely, a critical mass of 30 per cent is the launching pad for meaningful renewal. Senator Mitchell refers to a favourite preoccupation of Alberta's, what I will call "chattering classes" — the issue of Senate reform.

As an aside, I would suggest to our new Senate colleagues that change and renewal in this chamber has flowed from the attainment of a more than 30 per cent presence of women, which occurred in the last 12 years, and for which we can thank Prime Minister Chrétien. As well, Prime Minister Martin has already shown his interest in continuing in this direction.

The greatest Senate reform ever was not the capping of Senate terms at the age of 75 but, rather, the creation of a critical mass of women here. This is major Senate reform happening here and now. We are living this reform.

On this issue, what can be said about municipalities in Alberta, Quebec and elsewhere, where only 10 per cent of the mayors are women? What about our diplomatic corps, where only about 17 per cent of our ambassadors abroad are women? What about our senior civil service, where fewer than 25 per cent of the deputy ministers at the national level are women and fewer than 19 per cent of the federally nominated judges are women? What about the number of women elected to the House of Commons never exceeding 20 per cent? What about the equally dismal record of women's representation in our provincial legislatures? The Senate is the very last place in our nation to which any finger should be pointed by anyone when discussing the reform of political institutions in Canada.

Let the government and the people of Alberta, as well as every other province, provide a more welcoming climate for women as legislators, mayors and senior bureaucrats. The Senate of Canada is the leader in Canada when it comes to the rights of women and the broad promise of the Charter of Rights and Freedoms.

Of course, Charter decisions make changes only on paper; it is people that make changes in practice. The absence of a critical mass dedicated to the implementation of change simply means that Charter decisions are dispatched as hollow victories to the realm of never-never land.

Without active women's associations, without active financing for legal challenges and without the presence of women in the local legal firms, the promise of the Charter is all too often an empty one. Uneven access to the application of Charter laws promotes Charter alienation. Canadians in small-town Alberta and other small communities everywhere cannot embrace the promise of the Charter under these circumstances.

Honourable senators, the Charter must have fuel to function. The fuel will come from the proliferation of Charter-oriented interest groups, from well-funded court challenge programs and from reconstructed law firms. I am confident that the Charter will continue to be a major instrument to pull together the disparate elements of our nation.

**Senator Prud'homme:** Honourable senators, Senator Mitchell should know, and they should know in Alberta, how strongly I feel as a French Canadian from Quebec. I want to make a good speech and, as such, would ask for the adjournment of the debate.

On motion of Senator Prud'homme, debate adjourned.

## OFFICIAL LANGUAGES

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING ADJOURNMENT OF THE SENATE WITHDRAWN

**Hon. Eymard G. Corbin,** pursuant to notice of May 10, 2005, moved:

> That the Standing Senate Committee on Official Languages be empowered to meet on Monday, May 16, 2005, from 9:30 a.m. to 5:30 p.m., to consider a draft report.

**Hon. Bill Rompkey (Deputy Leader of the Government):** Honourable senators, as this has now been overtaken by events, I would move that it be stricken from the Order Paper.

**The Hon. the Speaker** *pro tempore***:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

Motion withdrawn.

## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

### COMMITTEE AUTHORIZED TO MEET

**Hon. Tommy Banks,** pursuant to notice of May 12, 2005, moved:

> That the Standing Senate Committee on Energy, the Environment and Natural Resources be instructed to meet at 9:00 a.m. on Tuesday, May 17, 2005 for the purpose of clause-by-clause study of Bill C-15.

Motion agreed to.

The Senate adjourned until Tuesday, May 17, 2005, at 2 p.m.

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