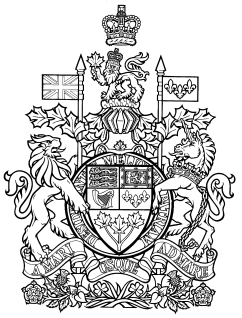

CANADA

Debates of the Senate

1st SESSION • 38th PARLIAMENT • VOLUME 142 • NUMBER 61

OFFICIAL REPORT
(HANSARD)

Tuesday, May 17, 2005

THE HONOURABLE DANIEL HAYS
SPEAKER

CONTENTS

Debates and Publications: Chambers Building, Room 943, Tel. 996-0193

Published by the Senate
Available from PWGSC – Publishing and Depository Services, Ottawa, Ontario K1A 0S5.
Also available on the Internet: http://www.parl.gc.ca

THE SENATE

Tuesday, May 17, 2005

The Senate met at 2 p.m., the Speaker in the chair.

Prayers.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, before proceeding to Senators' Statements, I would like to draw your attention to the presence in the gallery of His Excellency Dr. Saleh Abdullah Bin Hemeid, President of the Shura Council of the Kingdom of Saudi Arabia. He is accompanied by seven members of the Majlis Al Shura, and by the Saudi ambassador to Canada, Mohammed Al-Hussaini.

Welcome to the Senate of Canada.

SENATORS' STATEMENTS

HER MAJESTY QUEEN ELIZABETH II HIS ROYAL HIGHNESS PRINCE PHILIP, DUKE OF EDINBURGH

WELCOME TO CANADA

Hon. Jack Austin (Leader of the Government): Honourable senators, on behalf of the Senate of Canada, I am pleased to welcome to Canada today Her Majesty Queen Elizabeth II and His Royal Highness Prince Philip, the Duke of Edinburgh.

The Royal Party will arrive in Regina, Saskatchewan this afternoon and will be met by Prime Minister Paul Martin and Ms. Martin. The Royal Party will visit Saskatchewan and Alberta from May 17 to May 25 in order to take part in events to celebrate the centennial of the two provinces' entry into Confederation. This is the third visit of Her Majesty and Prince Philip to Saskatchewan and Alberta. They also toured the provinces in 1973 and 1977.

As the first dominion within the British Empire and the first country to join the Commonwealth in 1867, Canada has been especially fortunate to benefit from the traditions of the British monarchy. The history of Canada has evolved under the aegis of the British monarchy, which has bequeathed us a gift of incalculable value, the Westminster model of Parliament, perhaps the most successful form of government for providing effective democracy and accommodating civil debate.

The Queen has been in attendance at celebrations marking the centenary of the entry into Confederation by Manitoba, British Columbia and Prince Edward Island, as well as the centennial of the Northwest Territories. As Princess Elizabeth, she and Prince Philip first came to Canada in October 1951 and have since returned over 20 times. She has presided over the opening of the St. Lawrence Seaway, the patriation of our Constitution and the creation of Nunavut.

Her interest in our country is shared by other members of the Royal Family who have been in attendance with her and have undertaken their own visits to significant cultural and historical events in Canada. From May 31 to June 8, Prince Edward, the Earl of Wessex, will also be visiting Canada.

The Canadian people have always held the Queen in the highest regard for her continued personal interest in our welfare and prosperity. We have close ties with this monarchy that have been strengthened by the hardship of war endured by both countries and the shared values that are so integral to our nation. It should be noted that Prince Philip was an active member of the military during World War II. Both Prince Charles and Prince Andrew have military training, and with Prince Harry the tradition continues. This is particularly significant as Canada celebrates this year as the Year of the Veteran.

Hon. Noël A. Kinsella (Leader of the Opposition): Honourable senators, on behalf of the opposition in the Senate of Canada, I wish to associate my colleagues and myself with the words of welcome expressed by the Leader of the Government in the Senate to Her Majesty and Prince Philip on their visit to Canada.

Our country has been blessed by having Her Majesty and other members of the Royal Family always prepared to demonstrate in such exemplary fashion what duty and public service is all about and to do so with great dignity.

I know that my colleagues from the other place, particularly the members of Parliament from the province of Saskatchewan and the leader of Her Majesty's Loyal Opposition, will also be in Saskatchewan to more personally welcome Her Majesty.

ATLANTIC INSTITUTE FOR MARKET STUDIES

CONGRATULATIONS ON RECEIVING THE TEMPLETON FREEDOM AWARD FOR INSTITUTE EXCELLENCE

Hon. Terry M. Mercer: Honourable senators, the Atlantic Institute for Market Studies, AIMS, is an independent economic and social policy think tank based out of Halifax, Nova Scotia. As a federally incorporated non-profit organization, it is supported by contributions from individuals, corporations, foundations and other organizations. AIMS embodies a distinctive Atlantic Canadian voice by initiating and conducting research on emerging economic and public policy issues facing Atlantic Canadians and indeed all Canadians.

Honourable senators, AIMS is celebrating its tenth anniversary this year. It is fitting that it has again received international recognition for the excellence of its work with the awarding of the 2005 Templeton Freedom Award for Institute Excellence.

The Templeton Freedom Awards Program celebrates the outstanding work of the top non-profit research institutes and their contribution to policy issues. More than 200 think tanks in 67 countries are eligible for the Templeton Awards, and AIMS is the only institute in North America to be honoured this year.

The award includes a grant of US $10,000 and was presented at the end of April in Miami, Florida during the Liberty Forum of the Atlas Economic Research Foundation. This forum is an annual event that attracts influential policy and thought leaders from around the world.

Honourable senators, I take this opportunity to extend my sincere congratulations to AIMS President Brian Lee Crowley, as well as to the members of the board of directors, including such distinguished Haligonians as David Mann, George Cooper, Dr. Colin Dodds and Bill Mingo. I am sure all senators will join me in celebrating the ongoing domestic and international success of an important voice for Atlantic Canada.

• (1410)

RELATIONS WITH SAUDI ARABIA

Hon. Marcel Prud'homme: Honourable senators, I would like to join with the Leader of the Government in the Senate in welcoming Her Majesty Queen Elizabeth II, Queen of Canada, and Prince Philip. I have pledged allegiance to her 16 times. I am still very happy to show my loyalty by repeating that she is at home here. I hope Canadians will treat her as she deserves.

I was made a member of the Queen's Privy Council by her own hand. Not many senators in this chamber can claim that distinction. Having said that, I wish her a good time and happiness.

Earlier, His Honour introduced the Saudi Arabian delegation of the Shura and the head of the Shura Council. Theirs is a return visit, at long last, following a trip to Saudi Arabia made by a delegation of this chamber from January 18 to 25, 2001, accompanied by our beloved former Speaker Gildas Molgat.

I had the honour of visiting Saudi Arabia in 1993, 2000 and 2001. I believe strongly that we must continue the dialogue with our friends from around the world, Saudi Arabia being one such friend. We must share with them our own experiences, not tell them what to do.

I remember the inception of the Shura in 1980 with its 30 seats, and since then it has grown in stature. A colleague of ours was in Saudi Arabia recently and compared our Senate and the Shura of Saudi Arabia, saying, "My God, it looks like the Senate of Canada." Yes, indeed, it does, but there are many things that are not the same. They will come in due time.

I want to re-emphasize that members of the Shura are welcome in this country and in the Parliament of Canada.

At this time, I wish to salute the President of the Shura Council so that his name will be printed in the *Debates of the Senate*. His Excellency Saleh Abdullah Bin Hemeid has great academic qualifications and has had many great professional experiences. He has participated in and lectured at many conferences and symposia, and has published a number of academic works.

Honourable senators, I welcome my dear friend to the Senate chamber. I am very happy that he has at long last come to visit us in Canada.

BRITISH COLUMBIA

VANCOUVER—ST. JAMES COMMUNITY SERVICES SOCIETY ART PROGRAM—EXHIBIT IN SENATE FOYER

Hon. Mobina S. B. Jaffer: Honourable senators, I rise to tell you about an art exhibition, entitled "Moving Beyond our Challenges," that I am honoured to be hosting today and tomorrow in the Senate foyer.

As an honorary patron of St. James Community Services Society, I have personally seen the challenges faced by many of the artists and individuals helped by St. James.

St. James is an organization in the downtown east side of Vancouver that strives to provide support for people who face multiple challenges in life, including mental illnesses such as schizophrenia, while recognizing the need to help each individual they serve to see their own value as a person. The art program allows these individuals to overcome their challenges and express themselves in art.

Honourable senators, I know you are firm believers that a little recognition goes a long way in helping people to overcome their challenges. We all face challenges, but many of the artists featured here have and continue to overcome more than their share of challenges.

To help honourable senators understand the challenges faced, I would like to share with you the story of Carmen. She moved into Victory House, a safe home for 48 residents with chronic mental illness, in 1998. She had been living on the streets and in various downtown east side hotels in the worst part of Vancouver. Her diagnosis was schizophrenia and her symptoms were self-neglect, belligerence, poor compliance with medications and yelling at night. For these reasons, she was constantly being kicked out of her accommodations.

In her first days at Victory House, Carmen would walk the streets during the day, waiting for bread and soup in the food line-ups. She would refuse to take her medication and would not socialize. It took about two years to slowly build up a relationship with her where she was able to trust somebody.

Today, Carmen eats three meals a day. She has joined St. James' drama group and she sits down in the lounge to "people watch."

The best news is that Carmen has started to paint. With money from St. James' fundraising, canvas and paints were bought for Carmen and other artists to use. She started to express herself through her art and then verbally when approached.

Carmen's paintings are truly amazing. Her landscapes show castles, Saskatchewan wheat fields and Polynesian lagoons. She has been able to capture some of the wonderful insights and pictures only a schizophrenic can conjure. How beautiful it is that she is able to share these images on canvas.

Carmen and the artists at St. James are an example for us all. I invite senators to come to the exhibit to see their amazing work. Honourable senators will also have an opportunity to meet Sandra Smith, one of St. James' artists, who is in the gallery today, along with Jan Volker and Erin McNeill, who are representing St. James Community Services Society.

I am pleased today to not only be able to share these wonderful works of art with my colleagues in this chamber, but also to share our wonderful institution with the artists and the Canadian public.

I also want to thank the Usher of the Black Rod, Terrence Christopher, for his invaluable help in making this event possible.

[*Translation*]

KUWAIT

WOMEN GRANTED RIGHT TO VOTE

Hon. Rose-Marie Losier-Cool: Honourable senators, I will take a few moments to draw to your attention a news item I was delighted to see in today's papers. Last week, when I spoke to you of Millennium Development Goal number 3 and the importance of women in politics, I pointed out that there were still three countries left in the world where women could neither vote nor run for office.

This morning I am pleased to be able to revise that statement, because yesterday, May 16, the Parliament of one of those countries passed a law allowing its women to vote and to run for office. That country, honourable senators, is Kuwait. In 2007, when that country's next election is scheduled to take place, we will see women in the political arena for the first time. There will be one condition: these women will have to respect the law of Islam. Since the Koran can be interpreted as already giving women their rightful place, I am confident that this requirement will not in any way prevent the women of Kuwait from taking their place in the political arena. After all, they are already occupying senior positions in the oil industry, education and diplomacy.

Honourable senators, the international community of parliamentarians to which we belong can congratulate itself for helping to change attitudes and spread democracy the world over.

[*English*]

THE LATE JUDGE ALAN B. GOLD, Q.C.

Hon. Joan Fraser: Honourable senators, this morning, funeral services were held in Montreal for a truly extraordinary man, Judge Alan B. Gold.

[*Translation*]

Judge Gold was born in 1917 in Montreal. One would never have guessed his age because he was so strong and full of energy right to the end of his life. He studied law at the Université de Montréal, even though he was an anglophone, and he specialized in labour relations, in addition to teaching at McGill University.

[*English*]

He became a noted and respected lawyer, known to all as Judge Gold because he was Chief Justice of the Superior Court of Quebec from 1983 until 1992, during which period he notably did mighty work to reduce the delays and backlogs besetting that court. He knew that justice delayed is justice denied.

He was, however, most famed as an arbitrator and mediator: in labour relations, in the Quebec Public Service, in the Port of Montreal, in the post office, in rail strikes, and also in great public matters that went beyond labour relations. I think notably of the dispute at Oka and of the spoiled ballots affair after the last referendum in Quebec. He was Chairman of McGill University, Chancellor of Concordia University and Associate Governor of the University of Montreal, which indicates some of his dedication to the cause of higher education, as to many other causes.

• (1420)

Our family came to know him when our children and some of his grandchildren became friends. Through that connection, our family has attended for some years the same Seder and other religious celebrations that the Golds attended. On those occasions, I became aware of his immense intelligence and his deep love and understanding of the law and human nature and the way in which our societies work. He was a man of wry wit and great warmth, qualities he shared with his wife, Lynn.

I am sure senators will join with me in extending sympathies to Lynn and all of her family. Canada lost a great citizen when Judge Gold died.

ROUTINE PROCEEDINGS

MIGRATORY BIRDS CONVENTION ACT, 1994 CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Tommy Banks, Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, presented the following report:

Tuesday, May 17, 2005

The Standing Senate Committee on Energy, the Environment and Natural Resources has the honour to present its

SEVENTH REPORT

Your Committee, which was referred Bill C-15, An Act to amend the Migratory Birds Convention Act, 1994 and the Canadian Environment Protection Act, 1999, has in

obedience to the Order of Reference of Wednesday, February 2, 2005, examined the said Bill and now reports the same without amendment, but with observations, which are appended to this report.

Respectfully submitted,

TOMMY BANKS
Chair

(*For text of observations, see today's* Journals of the Senate*, p. 913.*)

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

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

STUDY ON ISSUES RELATED TO NATIONAL AND INTERNATIONAL OBLIGATIONS

INTERIM REPORT OF HUMAN RIGHTS COMMITTEE TABLED

Hon. A. Raynell Andreychuk: Honourable senators, I have the honour to table, in both official languages, the eighteenth report of the Standing Senate Committee on Human Rights, an interim report entitled, *Canadian Adherence to the American Convention on Human Rights: It is time to proceed.*

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

CANADA-AFRICA PARLIAMENTARY ASSOCIATION

THIRD SESSION OF PAN-AFRICAN PARLIAMENT, MARCH 29-APRIL 1, 2005—REPORT TABLED

Hon. A. Raynell Andreychuk: Honourable senators, pursuant to rule 23(6), I have the honour to table, in both official languages, the report of the Canadian delegation of the Canada-Africa Parliamentary Association on its visit to South Africa on the occasion of the Third Session of the Pan-African Parliament held in Midrand, South Africa, from March 29 to April 1, 2005.

QUESTION PERIOD

FINANCE

CHANGES TO BUDGET 2005— NEW BRUNSWICK—EFFECT ON REFURBISHING POINT LEPREAU NUCLEAR POWER PLANT

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate. In the weekend newspaper, I read a report by the Minister of Finance, the Honourable Ralph Goodale, in which he did an accounting of the cost of government measures announced since his budget. These essentially show that, counting the NDP budget measures, there is exactly $2 billion left this year and exactly $2 billion left next year for debt reduction. The condition for proceeding with the NDP spending was that at least this amount would be available at the end of the fiscal year.

Will the leader confirm that under the terms of the government's deal with the NDP any new measures announced from this time forward will have the effect of leaving the government unable to fulfill all of its commitments to Mr. Layton?

Hon. Jack Austin (Leader of the Government): Honourable senators, I cannot confirm that that is the case. The arrangement contained in Bill C-48, which has been tabled in the other place, makes it clear that the government is not prepared to enter into a deficit in order to carry out the provisions of Bill C-48. The government will maintain its contingency measures and any funds surplus to those contingency measures will be applied to the provisions of Bill C-48.

Senator Oliver: On May 4, 2005, the *Moncton Times and Transcript* newspaper carried a story that stated:

> The Liberal four point six billion dollar budget deal with the NDP has made it more difficult for the federal government to find money to help New Brunswick refurbish Atlantic Canada's only nuclear power plant, says Finance Minister Ralph Goodale.
>
> Money for the NDP deal will likely come from the around nine billion dollars in money the federal government has set aside as a contingency fund over the next two years, the same money the finance minister said would be used in a possible bail out package for the province.

Will the Leader of the Government in the Senate confirm the accuracy of the finance minister's assertion? Has the NDP budget deal put any federal contribution to the refurbishing of the Point Lepreau nuclear power plant in jeopardy?

Senator Austin: Honourable senators, I do not believe that the proposed contribution to the refurbishing of the Point Lepreau nuclear power plant and the government's arrangements as expressed in Bill C-48 are associated with one another.

As honourable senators are aware, questions of electric power generation in the provinces are entirely the responsibility of the provinces and not the responsibility of the federal government. However, the federal government has been willing to discuss a role for Atomic Energy of Canada, whose technology is used at Point Lepreau. A contribution toward refurbishment is contemplated if that technology agreement can be reached. However, the refurbishing is being deterred by the fact that the parties are not in agreement with respect to financial responsibilities.

• (1430)

ATOMIC ENERGY OF CANADA LIMITED

APPROACH TO MARKETING NUCLEAR TECHNOLOGY

Hon. Noël A. Kinsella (Leader of the Opposition): Honourable senators, I have a supplementary question. The Point Lepreau nuclear power plant has a CANDU reactor. Is the Government of Canada exploring the linkages in terms of contemporary and cutting-edge technology in this area, such that the opportunities of participating in the refurbishing of Point Lepreau speaks equally, if it is new technology in that refurbishment, to the inevitable refurbishment, indeed, potential sales of the new generation of CANDU reactors beyond Canadian borders?

Hon. Jack Austin (Leader of the Government): The short answer to the honourable senator's question is yes, but with some explanation. There are new technologies, which Atomic Energy of Canada wants to introduce into actual operation, and discussions are under way both with the Province of New Brunswick and with other countries with respect to the use of that new technology. One of the questions is: Who bears the risk of demonstrating that new technology? It would be less expensive for the Province of New Brunswick to refurbish Point Lepreau with more conventional, off-the-shelf CANDU technology.

I regret to say that I cannot take us too much further into the details of that negotiation at this stage.

Senator Kinsella: Honourable senators, I am sure the minister would agree, and I would invite his comment on the following: Beyond the synergy between Atomic Energy, the research community and the programs relating to the refurbishing of the various CANDU reactors in Canada, as a matter of policy, it would be in the national interest to reflect the latest views on environmental issues on clean power, on issues of new technology dealing with spent nuclear fuel and generally on cutting-edge advances around the technology. Tremendous advances have been made compared to the available technology when the CANDU reactors were built, the ones in this province of Ontario and the Lepreau one. We need some assurance that there is a holistic view taken that includes the environmental policy issues, as well as the research and development and financial issues around Atomic Energy.

Senator Austin: Honourable senators, I am, in general, advancing my own views in the same direction as Senator Kinsella. What we have seen recently is an enhanced understanding among producers of energy and environmentalists that nuclear power has an important role to play. As that understanding develops, and I hope it will, Canada will be able to advance the CANDU version of nuclear power generation.

As all of us know, nuclear power adds nothing to the air; it does not pollute the environment. The major problem with any kind of nuclear power generation is what to do with the spent nuclear fuels. Canada has a lot of Precambrian Shield, which has not moved for 4 billion years and therefore is probably a safe repository of these fuels.

I should like to make clear the dichotomy between federal and provincial responsibilities in this area. Provinces are responsible for the production and distribution of power within themselves; as well, provinces have opportunities to wield that power to other markets.

The federal government has an investment in the nuclear power industry, and it is a very old one. Ever since Canada became a nuclear power, in the sense that we had the technology to make energy from nuclear production and to make atomic bombs, it has developed an enormous expertise. AECL now has what it calls a green project, and it looks extremely promising.

I think Senator Kinsella and I would agree that Canada needs to continue to advance its place in the international community as a developer of nuclear power for electricity and civilian uses. I hope these negotiations with the Province of New Brunswick can realize a successful project at Point Lepreau.

NEW BRUNSWICK— FINANCIAL TERMS FOR REFURBISHING POINT LEPREAU NUCLEAR POWER PLANT

Hon. Lowell Murray: Honourable senators, I am not nearly as well informed as the two leaders are on the technical aspects of these negotiations, but I am very interested in the financial aspects. The government leader will recall, because he was Deputy Minister of Energy at the time, that when New Brunswick entered the nuclear power field, the federal government lent the province half the money for the construction of Point Lepreau.

Prior to that, when Ontario and Quebec entered the nuclear power business, the federal government was extremely generous, more generous than it was later with New Brunswick, to encourage them, for obvious reasons, to get into the field. More recently, as the minister will recall, the Chrétien government offered extraordinarily generous terms to China to encourage that country to purchase the CANDU reactor.

I should like to know what financial terms are being offered to New Brunswick by the federal government. Would those financial terms be at least as generous as those that the federal government is willing to offer foreign countries?

Hon. Jack Austin (Leader of the Government): Honourable senators, I think it is obvious to all that I am not in a position to disclose the nature of financial negotiations with respect to the refurbishment of Point Lepreau, or indeed at any time with respect to the sale of CANDU technology. Those are proprietary and commercial negotiations in nature.

I can confirm that Senator Murray is right; the federal government of the day gave Ontario attractive financial terms in order to induce it to be the first user of CANDU technology. I think that is within the normal commercial practice.

With respect to China, Canada has successfully overseen the construction and operation of two 600-megawatt CANDU reactors near Shanghai. The fact that that project was delivered on time and on budget has opened the opportunity for Canada to approach China with respect to subsequent purchases.

The funding by Canada was a $1.5-billion loan, which, under the arrangements, is being repaid and is expected to be totally repaid. There is no funding there in the nature of grant or concession.

Honourable senators, none of this reflects directly on Point Lepreau, but I can assure you that, with a long-standing interest in nuclear energy, I would like to see a successful conclusion between the Government of the Province of New Brunswick and AECL and the Government of Canada to refurbish Point Lepreau and put it back into commission.

Senator Murray: If the minister does not want to indicate what the federal government is offering New Brunswick, can he state on the record what it is New Brunswick has asked for from the federal government?

• (1440)

Senator Austin: No, honourable senators, that is simply the same side of the same issue.

[*Translation*]

SOCIAL DEVELOPMENT

NEW BRUNSWICK—AGREEMENT ON CHILD CARE

Hon. Pierrette Ringuette: Honourable senators, my question deals with the announcement by Premier Lord cancelling a meeting to sign an agreement for a new child care services program in New Brunswick.

The people in northwestern New Brunswick with whom I met with last weekend are scandalized that a nuclear program would be put on the same footing with a program for child care. The premier also indicated that he continued to regard the agreement for the transfer of the federal gasoline tax to municipalities on the same level.

Can the Leader of the Government in the Senate confirm to me that the Prime Minister will continue discussions with authorities in New Brunswick to ensure that children in New Brunswick enjoy the same benefits as children in other provinces in terms of federal grants?

[*English*]

Hon. Jack Austin (Leader of the Government): Honourable senators, I want to make it clear that the Government of Canada has no higher priority than to conclude an agreement on daycare with the Province of New Brunswick, as it has done with the Province of Newfoundland and Labrador, the Province of Nova Scotia and other provinces.

There is a specific commitment in the budget, Bill C-43, which is in the other place, to fund up to $5 billion as a first stage with respect to child care and daycare. Honourable senators, I know all members of this place would like to see that budget passed.

FINANCE

CHANGES TO BUDGET 2005—EFFECT ON QUEBEC

Hon. Marcel Prud'homme: If by chance there were no election, can the government leader give us any assurance that, given the rate at which these programs are being announced and the fact that they will have to be delivered, there will be money left in the kitty for the development of programs with the Province of Quebec?

Hon. Jack Austin (Leader of the Government): Honourable senators, I do not think the Province of Quebec has any concerns.

ELECTIONS CANADA

SASKATCHEWAN—CONTRIBUTIONS FROM FEDERAL LIBERAL PARTY TO PROVINCIAL LIBERAL PARTY

Hon. David Tkachuk: Honourable senators, a sum of nearly $93,000 in anonymous donations from the Liberal Party of Canada has found its way into the coffers of the provincial Liberal Party in Saskatchewan. Would the Leader of the Government in the Senate agree that such donations are a violation of the Canada Elections Act?

Hon. Jack Austin (Leader of the Government): I have no idea whether the statements made by Senator Tkachuk are accurate.

Senator Tkachuk: Is the Liberal Party of Saskatchewan using the Liberal Party of Canada to avoid revealing the names of the donors?

Senator Austin: I have no idea what Senator Tkachuk is talking about.

Senator Tkachuk: I do not fault the government leader for not reading the papers in my province, but this is not the latest news. This issue has been raised by members of the Legislative Assembly in the Province of Saskatchewan. I would ask the government leader to seek information related to this issue, and, in particular, to ascertain whether the Canada Elections Act is being contravened.

Senator Austin: Honourable senators, I will leave that to the processes that are normal in cases of an alleged breach of the Canada Elections Act.

While I am on my feet, I wish to advise the chamber that I am honoured to be designated by the Prime Minister as Minister-in-Attendance on Her Majesty during her visit to Regina and Saskatoon on May 18 and 19. This opportunity has been created by the requirement that the previously designated Minister-in-Attendance, the Honourable Ralph Goodale, be in Ottawa for a confidence vote on May 19.

Senator Tkachuk: The government leader raised the issue of the Queen. I am wondering whether members on this side who are going to see the Queen — and I am not of them — would be able to hitch a ride, or is the government leader travelling via Air Canada?

Senator Austin: Yes, I am flying via Air Canada. The flight leaves for Toronto at seven o'clock and leaves Toronto for Regina at nine o'clock. I would be very happy to have Senator Tkachuk as my seatmate.

Hon. Gerry St. Germain: I would be totally shocked if the government leader were to take anybody from the opposition, but that is a good sign.

Senator Austin: Not just anybody.

Senator Tkachuk: No, not just anybody.

Senator Kinsella: They have been taking from Canadians too long.

AGRICULTURE AND AGRI-FOOD

PROBLEMS IN FARM COMMUNITY

Hon. Gerry St. Germain: Yesterday, the Lanark Landowners Association held a protest on Parliament Hill to bring attention to the plight of farmers and rural Canadians. Clearly, this protest is another signal of the frustration many Canadian farmers have with current circumstances and government policies. Will the Leader of the Government in the Senate please tell us whether his government has any immediate concrete plans to further address the problems faced by Canadian farmers in the rural economy — over and above what the government has already done? Obviously, these people would not be reacting as they are if they did not require help.

Hon. Jack Austin (Leader of the Government): Honourable senators, the easiest issue to understand in agriculture today is the enormous loss of income by our total farm community. We have seen billions of dollars lost in the grain industry and in the cattle industry.

The government, as Senator St. Germain implies, has supported the agriculture industry with virtually $3 billion, to underwrite losses that have been sustained by the cyclical nature of that industry.

I wish to take this opportunity, because the honourable senator has asked me about this matter before, to say that with respect to BSE and the actions taken by R-CALF in the United States in a legal forum in the state of Montana, the hearing is planned for July 2005. The Government of Canada and the leaders in the cattle industry are now aware that, while the United States Department of Agriculture supports the unqualified opening of the border for live cattle 30 months and under, the court process may take up to two years to deal with the matter.

Honourable senators will realize that, both in the cattle industry and elsewhere, the Government of Canada will have to provide additional assistance, given the time that it may take to see a solution.

BOVINE SPONGIFORM ENCEPHALOPATHY—AID TO CATTLE INDUSTRY—CULLING OF OLDER ANIMALS

Hon. Gerry St. Germain: The government leader has scooped my supplementary question. Premier Ralph Klein has speculated that litigation from the U.S. protectionist ranchers will keep the border closed for two years. That is his statement.

The suggestion that has come forward from this side, both in the other place and here, from me, is the rationalization of the older part of the herd. To me, that would be a major step forward in diffusing R-CALF in their aggressiveness respecting shipment of our cattle into the U.S., because it would virtually eliminate the possibility of any BSE cattle being left in Canada. Will further consideration be given to that aspect of the cattle industry?

• (1450)

Hon. Jack Austin (Leader of the Government): I assure the Honourable Senator St. Germain that I had not seen a copy of his question today, but I anticipated that he would be interested in the subject because he has been pursuing the matter. The reason I gave the answer is that, obviously, if the issue is not to be solved for at least another two years, we will have an even larger inventory of over-30-month live cattle on our hands. This issue has become front and centre in government discussions with the cattle industry.

Honourable senators should also be aware that R-CALF is also trying to close the border for boneless cuts from animals under 30 months. Their legal action has added that particular request to the court action before Judge Richard Cebull in Montana. I am advised that approximately 60 per cent of our previous exports are maintained by the export of boneless cuts from animals under the age of 30 months. If that market were to be closed by court action in the United States, it would wreak havoc on our cattle industry and change our situation to a major economic crisis.

INTERNATIONAL TRADE

BOVINE SPONGIFORM ENCEPHALOPATHY— CLOSURE OF UNITED STATES BORDER TO CANADIAN CATTLE— INTERVENOR STATUS IN MONTANA COURT CASE

Hon. Gerry St. Germain: Is it normal for the Government of Canada to take intervenor status? Have we taken that position or are we just letting this process go ahead on its own?

Hon. Jack Austin (Leader of the Government): We applied for amicus status — that is, friend of the court status — and the court refused. As Senator St. Germain indicates, it is not normal for any government to stand as a party in an action between or among litigants such as this — all American litigants. It is not normal for Canada or foreign governments to submit themselves to cross-examination and production of documents in such cases. The case in the Montana courts is entirely between the United States Department of Agriculture, which is trying to maintain its rule, and the actions of R-CALF.

DELAYED ANSWER TO ORAL QUESTION

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I have the honour of presenting a delayed answer to an oral question raised in the Senate on May 3, 2005, by Senator Kinsella, concerning the new Canadian embassy currently being constructed in Berlin, Germany.

FOREIGN AFFAIRS

GERMANY—NEW EMBASSY

(Response to question raised by Hon. Noël A. Kinsella on May 3, 2005)

QUESTION 1 — Was the Minister of Foreign Affairs at the opening of the new Canadian Embassy in Berlin on April 29? If not, why not?

The Minister was at the Third Ministerial Conference of the Community of Democracies in Santiago, Chile, on April 29, 2005.

QUESTION 2 — What was the cost of the new Embassy?

The total Treasury Board-approved cost to Canada is $101,205,888.00, including site acquisition, design and construction, project delivery, contingencies and reserves. The final cost to Canada is expected to be less than the approved budget, or approximately $100 million.

QUESTION 3 — Has the Canadian government given up control over embassy property for commercial considerations?

No. Most of Canada's missions around the world are in multi-tenant facilities and ensuring the security of all Canada's facilities abroad is always a priority. In Berlin, the building is constructed in such a manner that the Embassy essentially occupies one tower in a three tower complex. The Embassy space is not accessible from the other areas of the facility. The Embassy is also equipped with all necessary security devices and counter-measures. Security specialists have been involved in the planning of the facility from the outset and all appropriate measures have been taken. Canada retains ownership of the land.

QUESTION 4 — What are the terms and conditions of the agreement with Hannover Leasing governing the latter's ability to lease space in the embassy building to organizations or entities about whom Canadian intelligence agencies might have concerns?

Canada was successful in its negotiations with the developer to include a veto clause in the contract under which the developer must provide prior notice to Canada of its intent to lease space to a given entity, whether commercial, retail or residential, and Canada has the right to veto the proposed lease.

QUESTION 5 — Is there a 150 per cent cost overrun for the Canada House project in Berlin?

The project is actually under budget. The Treasury Board approved budget cost objective is $101.2 million and we expect the final cost to be less than $100 million. There is no cost overrun.

QUESTION 6 — How does the cost of construction for the new Berlin Embassy building compare with the costs for the Washington and Tokyo embassies?

The total cost of construction (not including land purchase and fit-up) for the Berlin project will be approximately $70 million. This includes both the diplomatic embassy and the private sector commercial components. Since the embassy occupies approximately half the total public-private facility, the construction cost of the embassy alone is approximately $35 million. In comparison, the Washington embassy cost of construction was $67.5 million in 1988. This is equivalent to approximately $110 million in 2005 dollars. The Tokyo embassy cost of construction was $128.3 million in 1991, or approximately $200 million in 2005 dollars.

THE SENATE

TRIBUTE TO DEPARTING PAGES

The Hon. the Speaker: Honourable senators, before calling Orders of the Day, I would like to draw your attention to Senate pages who will be leaving the program this year, and it is my pleasure to introduce three of those pages who will be leaving today.

The first is Christopher Reed, who is from Halifax, Nova Scotia. He has recently completed his BA Honours in Canadian political science with a minor in history. He hopes to attend law school this fall with the possibility of serving Canada as a naval legal officer. Knowing that nothing is for certain, Christopher is also interested in continuing to work at the Senate. Christopher has greatly enjoyed his time as a page and wishes everyone the very best in the future.

[*Translation*]

Maxe Joanisse-Blackmore, of Saskatchewan, is delighted with his experience as a page in the Senate. The lessons learned in the Senate will certainly help him achieve his dream of becoming a lawyer specializing in medical law and play a role in developing health policies later in his life, as a politician.

Maxe would like to express his thanks to the Pages Program and to all those who have contributed to his development.

[*English*]

Finally, Clinton Unka is from Yellowknife, Northwest Territories. Upon completion of his political science degree at Carleton next year, he will be taking some time to travel to Europe and other exotic destinations. Clinton is also gaining a better understanding of politics, not only at the federal level but for the enhancement of northern development and Aboriginal leadership within his community.

He would also like to thank his peers and the influential people in the Senate who have made his experience here during the last two years worthwhile and memorable.

[*Translation*]

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—THIRD READING

Hon. Jean Lapointe moved third reading of Bill S-11, to amend the Criminal Code (lottery schemes), as amended.

He said: Honourable senators, today I ask you to support this bill and to send it to the other place immediately. Honourable senators, as we speak, thousands of our fellow citizens are pouring their last savings into those diabolic machines known as video lottery terminals.

It is not my intention to go over all the atrocities that these machines inflict on the population, but each day they attack new people, thus creating new pathological gamblers. That is why it is urgent that Bill S-11 be passed to save thousands of human lives.

I would add, in closing, that not only will we improve the quality of life of Canadians, but at the same time we will save hundreds of millions of dollars to both levels of government.

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

Hon. Senators: Agreed.

Motion agreed to and bill, as amended, read third time and passed.

[*English*]

NATIONAL BLOOD DONOR WEEK BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Christensen, for the second reading of Bill S-29, respecting a National Blood Donor Week.—(*Honourable Senator Stratton*)

Hon. Catherine S. Callbeck: Honourable senators, this item stands in the name of Senator Stratton, who has yielded so that I may speak at this time.

It is a great pleasure to rise in support of Bill S-29, and I certainly agree with the comments that were made last week by Senator Milne when she spoke on behalf of Senator Mercer on this legislation.

This bill purports to designate the second week in June as National Blood Donor Week. With the enactment of Bill S-29, Canada will join with 192 member states of the World Health Organization and over 200 volunteer blood donor organizations around the world who already celebrate World Blood Donor Day on June 14 of each year. That date would be one of the highlights of National Blood Donor Week in Canada.

• (1500)

Donors and volunteers, through their selfless acts, are making an invaluable contribution to the health and well-being of their fellow citizens. Every minute of every day, even as we speak, someone in Canada needs blood. By giving the gift of life, donors become the everyday heroes of their communities.

It is said that every donation of blood has the potential to save three lives. Although donors and volunteers will never know the lives they have touched, they can rest assured in the knowledge that their gift will make a huge difference in the lives of those who depend upon that gift of life. They can be justifiably proud that their selfless acts have given renewed help and hope to others.

The gift of blood is a truly selfless act. Donations of blood are completely voluntary in Canada. That achievement in itself is worth celebrating, and it is a tribute to the values we share as a people.

Over the years, Canadians have responded to the challenge. They have responded to the challenge because caring and compassion are part of our Canadian way of life. There is a tradition in this country of helping one's fellow citizens. By designating the second week of June as National Blood Donor Week, we recognize and celebrate those who have quietly and literally given a part of themselves to others.

Donors and recipients will never meet one another, and yet the bonds of community are strengthened because of these selfless acts of generosity, the giving of one part of oneself so that others might live. We need to recognize and celebrate these gifts.

There are, as well, some practical and pragmatic reasons for increasing public awareness and understanding of the importance of donating blood. Today, less than 4 per cent of eligible Canadians actually donate blood every year, and yet the demand for blood and blood products is rising. Advances in medical science and more aggressive treatments have resulted in a growing need for these products.

According to Canadian Blood Services, roughly 137,000 people are treated for cancer every year. Cancer patients often need blood to survive their treatments. The number of transplants has increased from 16 in 1 million Canadians in 1981 to 59 per 1 million Canadians in 2000. These include kidney, liver, heart, lung and bowel transplants, all of which are lengthy and complex procedures requiring significant amounts of blood. New advances in treatment for a wide range of other diseases and injuries have also given rise to new demands for blood.

Given the huge need for blood supplies and the invaluable contribution they make to saving lives and restoring health, it is a small sacrifice to be a donor, to give the gift of life. I hope that by declaring National Blood Donor Week many more Canadians will be inspired to become donors and to help ensure that the rapidly rising needs continue to be met.

I would also like to recognize the invaluable contributions by the Canadian Blood Services and Héma-Québec, which manage the blood supply system in this country. Since the inception of these two organizations in 1998, confidence in the safety and integrity of the blood system has been restored. In addition to effective screening and testing, the goal of safety is reflected in the way that the blood supply is collected, maintained and regulated. At the same time, they are on the leading edge of innovation, meeting new needs in the fields of transfusion and transplantation.

Canadians can be fully confident about the policy, management and operation of the blood supply system in this country. I congratulate these two organizations for the excellent work they are doing and for their dedication and commitment as an integral part of the health care system.

Honourable senators, we need to recognize and celebrate the givers of blood, the givers of life. I hope the passage of this bill will not only recognize and celebrate those who donate but that it will also inspire many others to do likewise. We need to meet the challenge of ensuring that a safe and life-giving supply of blood will be there when needed for our neighbours, our families, our fellow citizens or even ourselves. I ask all senators to join with me in supporting this bill.

On motion of Senator Stratton, debate adjourned.

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, with leave of the Senate, I move:

> That the Standing Senate Committee on Agriculture and Forestry have power to sit at 4 p.m. today, 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?

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, one day, somebody will answer that question with a "no." There are other committees, such as the Standing Senate Committee on Foreign Affairs, that might want leave to meet while the Senate is sitting. We could soon run the risk of suggesting that it is not the Senate that is important but the committees.

I recognize that committees are very important; however, in my opinion, first and foremost, the Senate takes precedence.

[*English*]

I will agree to the motion, but again, I will get up to speak every time permission to sit is requested, even if the motion relates to my own committee. Our first duty is to be here in this chamber. If the Foreign Affairs Committee were to request leave to sit and I were to have a bill standing in my name on the Order Paper, one I wished to debate, what would I do? Would I forget about my bill to attend the committee meeting, or would I stay in the chamber? I will not object today, but someday, someone is bound to say no to these leave requests.

The Hon. the Speaker: I take it leave is granted, honourable senators.

Senator Rompkey: I want to assure Senator Prud'homme that we do not move such motions without thought. This afternoon, I understand that a minister is available to meet with the committee. It has been our usual practice when ministers are available that we try to accommodate them.

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

Motion agreed to.

CANADA ELECTIONS ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Harb, seconded by the Honourable Senator Mercer, for the second reading of Bill S-22, to amend the Canada Elections Act (mandatory voting).—(*Honourable Senator Austin, P.C.*)

Hon. Jack Austin (Leader of the Government): Honourable senators, let me begin by expressing my appreciation to Senator Harb for introducing Bill S-22. As he has made clear, while the bill proposes a system of mandatory voting, somewhat along the design of Australia's compulsory voting law, the specific purpose for which the bill has been tabled is to invite a debate in an examination by the Senate of the reasons for a long trend line of reduced voter participation in our national elections.

For Canadians, the idea of compulsory laws is not easily accepted. We have a long-established bias in favour of our citizens acting responsibly and being part of an informed and active civil society. Canada is a mature and respected democracy. All adult citizens are given the right to vote, and every political party, our media and other groups in society constantly encourage Canadians to do so.

The question, then, is: What the are reasons, obvious or underlying, for the decline in voter participation in national elections of the last few decades? This decline speaks to a proper diagnostic process and, in that regard, the government launched a specific process last February.

• (1510)

Among its key components are regional round tables of experts and practitioners to discuss democratic reform issues; commissioned research studies examining the challenges facing our democracy and potential solutions; citizen deliberative workshops to get a sense of how citizens view our democratic system and the values that would underlie their approach to fixing the democratic deficit; and an upcoming colloquium on civic literacy.

Without pre-judging the government's diagnostic process, one key theme that seems to be emerging is the importance of raising levels of civic literacy. Studies suggest that voter turnout is related in good measure to low levels of political knowledge, particularly among young people. Furthermore, there is evidence that levels of civic literacy are low and may have declined considerably over the last several decades. These same studies indicate that participation rates rise with the age of voters. Does this demonstrate that earlier generations had a higher commitment to civic literacy and the electoral process? Alternatively, does it demonstrate that older voters, generally with greater financial possessions and a sense of higher levels of security vulnerability, focus more on their interests and, therefore, want to choose the political and policy directions that most suit them?

Another factor to be considered in voter participation rates may be the opposite of the point I have just made. In brief, it may be called voter satisfaction. Empirical data is needed, but when the economy is growing, unemployment rates are down and material well-being is pervasive, people may simply feel that not voting is, in an indirect way, a vote for the status quo. Whatever speculation we may indulge in, it is objectively clear that fewer of the younger voter age groups have expressed interest in public policy issues. As a group, these age groups concern themselves less with issues of public and political governance.

It is for a good reason then that our major political parties on the federal scene are active in recruiting younger members. The Liberal Party of Canada, for instance, has a youth organization whose members have a preferred position in national and provincial meetings and an entitlement to participate in selecting candidates for national leader or for election to the House of Commons in a particular constituency. This affirmative action on the part of the Liberal Party of Canada has been of great benefit to both its activism and its recognition, at an early stage, of the changes in generational attitudes.

I will now turn to the question of compulsory voting and whether this would be the right course to take. Earlier in the debate, Senator Kinsella raised the question of the right to vote as entrenched in section 3 of the Charter of Rights and Freedoms, which states:

> Every citizen of Canada has the right to vote in an election of members in the House of Commons or of a legislative assembly and to be qualified for membership therein.

In stating his opposition to Bill S-22, Senator Kinsella raised the issue of whether implicit in the right to vote is the right to not vote. I agree with Senator Kinsella that there is an important question of Charter law that stands in the way of a compulsory voting statute. In any event, the issue in this debate is whether a mandatory voting law would be of net public benefit. Put another way, does mandatory voting fit within our shared understanding of democracy and political freedom?

When the Royal Commission on Electoral Reform and Party Financing, headed by Pierre Lortie, examined mandatory voting in its 1991 report, it rejected the idea as being inconsistent with our values. The report stated:

> Although every effort must be made to ensure voters are registered and able to vote if they wish to do so, the public interest in electoral democracy need not extend to a requirement that citizens vote. The Canadian approach has assumed that voters have the right not to vote, and we agree with this view.

The Lortie commission went on to conclude that compulsory voting would be unacceptable to most Canadians, "given our understanding of a free and democratic society."

In other words, the commission was saying that compulsory voting runs contrary to our tradition of regarding the vote as a right to be exercised freely. I agree with both the Lortie commission and Senator Kinsella on this issue. I believe most Canadians would view mandatory voting as an infringement of their personal liberty. Senator Harb has suggested that his proposed "none-of-the-above" category would address the issue of personal liberty since, in his mind, this would mean that people would not be forced to vote but only obligated to go to a polling station. I dare say Canadians would not distinguish between being forced to the polls or being forced to vote. They would regard both as equally contrary to their personal liberties. In defence of the bill, Senator Harb tells us that 70 per cent to 80 per cent of Australians support mandatory voting.

I would like to bring the attention of honourable senators to a survey conducted by the Institute for Research on Public Policy in 2000 that concluded 73 per cent of Canadians oppose the idea of mandatory voting. It seems, therefore, that Canadians and Australians do not share the same perspective, and that an equal number of Canadians would oppose mandatory voting for our system.

While there is no question that the utmost should be done to encourage Canadians to vote and to facilitate their participation if they wish to do so, individual choices about whether to participate must be respected. I believe that this is likely why most Western democracies do not provide for mandatory voting and why those countries that have mandatory voting laws tend not to enforce them. Furthermore, I note that other countries, the Netherlands and Austria, for example, have repealed their mandatory voting laws. It would seem that mandatory voting is not seen as a panacea for democracy.

Another important matter raised by the Lortie commission in its report is fairness in the enforcement of mandatory voting laws. The report noted that mandatory voting laws are rarely enforced effectively or equitably because citizens must be given the benefit

of the doubt when they explain why they did not vote. The end result is that many people are prosecuted and fined without knowing that they could simply offer reasonable excuses, true or false. Others who come up with reasonable excuses, true or false, are not prosecuted.

I wholeheartedly agree that we must do something about declining voter participation. There is no question that the dramatic declines we have seen over the past 15 years or more do not bode well for the future of our democracy, should the trend continue. Without exaggerating too much, the level of voter participation does provide a useful barometer for the state of our democracy. Voting is the simplest way for Canadians to participate, and there is no evidence that they are replacing the act of voting with other acts of participation, as evidenced by declining participation in political party membership. I think we can conclude that mandatory voting does not address the underlying causes of the democratic malaise that we are currently experiencing. Mandatory voting would only serve to obscure the true feelings of Canadians. We would lose the best measure we have of how engaged Canadians truly are in the democratic system.

Mandatory voting might see our participation rate rise, but it would be an artificial measure. Our political parties, independent foundations, institutes and university leaders should explore ways of promoting civic literacy as a first step to addressing the issue of voter turnout and the broader issue of civic engagement. Their efforts should be supported financially by government through an independent granting body set up by Parliament.

I will conclude by restating the issue. What is the paramount public policy — that we require to know the political choice of every citizen of voting age through a system of compulsory voting or that every voting-age citizen has the right to choose whether to participate in the electoral process? Senator Harb does a public service in raising these questions for our consideration.

Honourable senators, if there are no other speakers at this stage in our deliberations of Bill S-22, I move that the subject matter of Bill S-22 be referred to the Standing Senate Committee on Legal and Constitutional Affairs for further study and report.

The Hon. the Speaker: Before I can put a motion, other senators may wish to speak.

On motion of Senator Stratton, debate adjourned.

• (1520)

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, P.C., 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 Joyal, P.C.*)

Hon. Serge Joyal: Honourable senators, it is a great opportunity that is afforded today to consider the report of the Rules Committee on the proposed conflict of interest code for senators.

This is an issue of particular interest to me. When we published our book on the Senate — I use the collective "we" because there were many contributors to the book, which was released in 2003 — among the most learned contributors were Professor David Smith, the emeritus professor of political science at the University of Saskatchewan, and Professor Paul Thomas, who is a professor of political science at the University of Winnipeg. I should like to quote Professor Thomas, who raised this issue of conflict of interest for senators, at page 210 of the book. He said: "The suspicion that the Senate supports a privileged economic elite has not gone away, as revealed by the fact that journalists track the corporate directorships held by senators and there are regular calls for stricter disclosure and conflict of interest rules governing their behaviour."

That issue was raised, as I mentioned, by almost all the contributors to the book, and I raised it myself in my own chapter. This was not, in fact, when then Leader of the Government Senator Carstairs tabled a motion in February 2003 that the Rules Committee study a draft bill and a draft code, because both of them were tabled at the same time, as my honourable colleagues will remember.

We concentrated first on the draft bill. We agreed at the end of the study procedure that the bill should be split in a way, that there should be an Ethics Commissioner for the House of Commons and an Ethics Officer for the Senate. We thought, and I think we were well-advised, that our chamber has a different constitutional status than the other place and that the status of our Senate Ethics Officer should not be linked to the political problem that might stem around him or her in the other place. In light of what is going on these days with the present Ethics Commissioner in the other place, within less than a year, the proof is that we were well-advised.

Once we dealt with the draft bill, the Rules Committee started studying the code. The code, as honourable senators will remember, was tabled at the same time as the bill. The bill was tailored to the needs of the other place, mainly.

To me, there was a major problem that we had to reconcile if we were to draft or think of a bill that would answer the Senate's needs — that is, should we not have a code that answers the Senate's needs? Hence, of course, the obligation remained on the shoulders of the members of the committee to look into the draft code with our perspective. This is a very important point.

In 1996, in a case that has remained one of the seminal cases on the issue of codes of conduct, *R. v. Hinchey*, Justice L'Heureux Dubé wrote, in paragraph 18 of the majority decision:

> In my view, given the heavy trust and responsibility taken on by the holding of a public office or employ, it is appropriate that government officials are correspondingly held to codes of conduct which, for an ordinary person, would be quite severe. For the public, who is the ultimate beneficiary of honest government, it is not so easy to sort out which benefits are legitimate and which are laden with a sinister motivation.

In other words, the justices of the Supreme Court of Canada have been quite clear in their preoccupation to try to determine a level of obligation, for anyone who holds a public duty or a public office, to maintain a higher level of ethics, a higher level of transparency. The problem is then where to draw the line between the private interest of a senator and the need of transparency for the public. This is the nucleus of the problem.

As any citizen in this country, we enjoy the right to privacy. The right to privacy is a fundamental right. It is so much a fundamental right that article 12 of the Universal Declaration of Human Rights, adopted in 1948, states as follows:

> No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.

There is then — and my honourable colleague, the Leader of the Opposition, will certainly concur with me — the International Covenant on Civil and Political Rights — which Canada ratified — entered into force in 1976, which says, in article 17:

> No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

That is paragraph 17(1) of the international covenant.

There is a similar section in the European Convention for the Protection of Human Rights and Fundamental Freedoms. It can be found in article 8. I will spare honourable senators the reading of it.

There are two key sections in our Charter on rights to privacy, sections 7 and 8. I will read section 8 in French, because the quotation I want to propose to you has been handed to me in French.

[*Translation*]

> Everyone has the right to be secure against unreasonable search or seizure.

How have the courts interpreted this section or this protection?

Section 8 protects persons, and not premises.

[*English*]

It is aimed to protect the persons, and not the premises, not the dwelling per se.

[*Translation*]

In particular, it protects a collection of personal biographical information that, in a free and democratic society, individuals could wish to establish and withhold from the knowledge of the state. This is especially true for information tending to reveal intimate details about the lifestyle and personal choices of an individual.

[*English*]

At issue, in other words, is the lifestyle and personal choice of the person. That has been confirmed in a decision of the Supreme Court, *R. v. Plante*, in 1993.

Honourable senators, when I read the draft code of conduct, I had to ask myself what principles were at stake in that draft code. To me, there were two sets of important principles. The first is the Charter of Rights principles. In other words, it is not because we are senators that our rights, the ones entrenched in the Charter, must be abandoned. The rights we have under that Charter in terms of the draft code are two — privacy rights and the right to due process. If you are to judge me as a senator, I want to have the benefit of due process. This is guaranteed under sections 7 and 11 of the Charter.

• (1530)

I had a second preoccupation. In adopting a code on conflict of interest, we are making a fundamental change in the Senate. We are changing the obligation of each and every senator and the way in which the Senate, as an institution, maintains discipline. We are bringing changes at two levels — at the level of the individual senator and at the level of the institution.

I asked myself how we should do that and what should preoccupy us first and foremost. I decided to write to the Privacy Commissioner of Canada in November 2004. I sent the draft code to the Privacy Commissioner so that I could receive the benefit of her wisdom. I would like to quote the letter that I received from her on February 18, 2005. She answered me in French and wrote:

[*Translation*]

> The issues that you raise in your letter are important. In fact, any intrusion into the private life of a citizen must be justifiable in a society where this same right is recognized and protected. That is especially true with respect to information relating to the statement of assets and liabilities of a citizen, or that of a legal spouse or common-law partner.
>
> It is a self-evident truth regarding personal information that the closer one is to the historiography of a person including information about health, the more certain it is that personal information must be adequately protected.

[*English*]

What did the Privacy Commissioner say in relation to the draft code? She did not pronounce on each and every section, but I think she gave us a hint on what we should be looking for when we adopt a draft code. What are those hints?

In response to my letter, Ms. Stoddart, the Privacy Commissioner, sent me a long presentation made at an international convention last September 2004 in Poland. The convention was calling upon privacy commissioners around the world to reflect on the very issues that are at stake in our code of ethics. What was the gist of the report of that international convention? It stated:

> Privacy is an instrumental freedom. Privacy facilitates the practical enjoyment of other fundamental rights.

Privacy ensures that:

> ...every person has some zone of privacy in which to develop individual identity, maintain relationships of trust and intimacy with others, and preserve dignity.

In other words, to make choices in particular cases between privacy and disclosure is a challenge that aims to apply a test to decide where to draw the line. This is the $1-million question: Where to draw the line on our rights to privacy, to our lifestyle, to our capacity to maintain intimacy in our relationships, to our capacity to develop ourselves the way we feel we should develop in society, and the need for transparency?

Honourable senators, the answer to that difficult question lies in section 1 of the Charter. The Honourable Leader of the Government will remember the discussion we had on that particular section of the Charter. Our privacy rights are not supreme. They are not absolute.

The Hon. the Speaker: Senator Joyal, I am sorry to interrupt, but your 15 minutes have expired.

Senator Joyal: Honourable senators, I have attended 26 committee meetings on this issue, and members of the committee have been very lenient in allowing me to speak. This is my last kick at the can. Therefore, I would request the consent of the house to allow me to continue.

Hon. Senators: Agreed.

Senator Joyal: Section 1 of the Charter established that privacy rights are not absolute. Section 1 states that those rights are guaranteed "subject only to such reasonable limits prescribed by law." What are the reasonable limits to the privacy rights of a senator? Those limits should be tested by the *Oakes* principle, a decision of the Supreme Court that has interpreted section 1 and has determined that when one infringes upon the rights of someone else, that infringement should impair "as little as possible the right or freedom in question." In other words, it is the test of minimal impairment. If we are to limit the right to privacy of senators, or to compel senators to declare an interest, to declare things or points or information that normally would remain private, it should be done in conjunction with the test of minimal impairment to satisfy the need for transparency.

Honourable senators, I am happy to report that the committee has accepted those two essential elements, which are the right of privacy and the test of minimal impairment. Those elements are well spelled out in section 2(2) of the draft code and in section 49. These two essential elements of the code were accepted after long discussions in committee. I am very indebted to all members of the committee who were receptive to those arguments.

Section 2(2) of the code states:

> The Senate further declares that this Code shall be interpreted and administered so that Senators and their families shall be afforded a reasonable expectation of privacy.

Finally, section 49 of the code says quite clearly:

> In interpreting and administering this Code, reasonable expectations of privacy shall be impaired as minimally as possible.

The code contains this test, which I think is the important point to have in the code. When a clear case of conduct raises problems, the Senate Ethics Officer, or SEO, and senators can use the test to resolve the case.

In fact, the committee applied this test to the 18 obligations that the code contains. The code contains 18 obligations for individual senators. I would like to quote some of the obligations that have been submitted to the test of privacy, versus minimal impairment, versus transparency. I want to mention only two. One is the case of family interest or spousal interest.

Earlier in our careers, many of us were involved in promoting the equality of partners in the common-law family or of spouses in the legal family. I am looking at Senator Bacon, as she was instrumental in the progress made in this regard in the province of Quebec. We know that the equality of sexes as enshrined in section 28 of the Charter supports those changes. Your spouse and my spouse are treated equally in the couple relationship.

If we are to submit that person to certain obligations, it should be strictly in relation to issues that put our spouses in a conflict of interest. If a senator's spouse has a contract with the government, then there is a presumption in the public that the senator might have been involved in obtaining the contract. I think the public has to know that, if that is the case, then it is disclosed. In other words, we have maintained a level of privacy in the couple's relationship to the point where the public interest is at stake.

• (1540)

I should like to thank the members of the committee. This was not an easy discussion or issue, but I believe our proposal meets the test of section 1 of the Charter.

I will move, honourable senators, to the second set of principles, which is, in fact, the changes brought to the Senate as a chamber by the fact that we have now created, through Bill C-4, the position of Senate Ethics Officer. In other words, what principles should we maintain, given that we now have a Senate Ethics Officer, and what is the responsibility of the chamber in relation to discipline?

Honourable senators will remember that the jurisdiction of the Senate over its members has been decided by the court, and the right of the Senate to impose discipline within its walls is absolute and exclusive. Accordingly, the court declined jurisdiction.

Honourable senators will remember that we are here on the issue of the rights of Parliament. Parliament has the right to discipline its members. The Senate has the fundamental right to discipline its members. In creating the position of SEO, we have to make sure that we retain, as a chamber, the right to continue to exercise that power over our members, in other words, to discipline our members.

On many accounts, the committee looked carefully at the various sections of the draft code to make sure that the SEO would have the capacity to do his work, to look into an allegation, to investigate if the need is so, and to give a report and recommendations to the committee in the context of maintaining the rights of the Senate over its members, as has been decided since 1884 by courts that have interpreted that responsibility of Parliament. Honourable senators, this is a very important issue. Who controls the SEO, in fact, is a key issue to the reliability of the system.

If we, as a Senate, are to maintain that capacity to exercise our responsibility as a whole, we cannot ignore that the other aspect of the SEO, of course, is his budget. I should like to address myself to the Speaker. The act provides quite clearly that the Speaker has a role in that context, and the Speaker is our representative. I should like to quote section 20.4(8) of the Parliament of Canada Act:

> The estimate referred to in subsection (7) shall be considered by the Speaker of the Senate and then transmitted to the President of the Treasury Board...

Honourable senators, one element in the exercise of the Speaker's responsibility is the Speaker's Advisory Committee, or what we call the SAC. That committee was created by a former Speaker, the late Gildas Molgat. When the Speaker has to examine the estimates of the SEO, the Speaker may ask for the opinion of the Special Advisory Committee of the Senate, and the leaders of both parties sit on that committee, and whoever else the Speaker, in consultation with the leaders, invites. In other words, we still keep a capacity to express a view on the budget of the SEO.

The other aspect that is very important is that the SEO is not totally outside court review. Honourable senators will remember that last summer, last July, the Federal Court heard a case between Democracy Watch and the Attorney General of Canada (Office of the Ethics Counsellor) respecting the then Ethics Counsellor, Howard Wilson. The court not only granted the petition but found that the former Ethics Counsellor was, in fact, biased in the way he had exercised some of his responsibility. This is a very serious issue.

We have entrenched into our statute the status of a Senate Ethics Officer. Of course, the former one was not defined in the law. It was merely an administrative decision of the Prime Minister. It was an exercise of the prerogative of the Prime Minister. Now we have a statute.

I read in the *Ottawa Citizen* of May 11, which is less than a week ago, on page A3, that Duff Conacher, the coordinator of Democracy Watch, said his independent group is preparing a court case against Mr. Shapiro because of his apparent bias in favour of the Liberal Party. This issue will be in court very soon. It is important, honourable senators, because we tried as much as possible in the original bill to protect the rights of individual senators in the exercise of their responsibility — sections 20.5(2) and 20.5(3); in fact, the rights of honourable members of the Senate to exercise their responsibility and duty within the protection of Parliament was well enshrined in the bill. As I say, there is certainly a pending issue with that, because the decision of the Federal Court of last summer left it open.

Honourable senators, the media will also be watching over the management of the SEO. No doubt the media will pay close attention to anything relating to the activities of the SEO and senators in relation to the code.

One of my preoccupations, which I shared with members of the committee, was the financial implications. If any one of us is the object of an allegation, that senator will have to defend himself or herself. He or she might have to seek the support of legal counsel, and perhaps at great expense. Personally, I certainly would not like a senator being barred from defending himself or herself because of a lack of financial support. It was not the mandate of the Rules Committee to decide upon that, but, on page 3 of the report, the committee spells out quite clearly that it takes these concerns seriously but has concluded that those matters, that is financial support, are beyond its mandate. It is, however, within the mandate of the Standing Committee on Internal Economy, Budgets and Administration to develop a policy for code-related expenses.

It is very important that we keep that in mind, because we cannot ignore that this issue is public. We will have to pay great attention to each and every obligation spelled out in the code. Journalism, as I said, properly understood, is necessary and certainly part of the democratic exercise.

I should like to close by referring again to the international meeting of privacy commissioners last fall: "Shaming is a longstanding element of punishment and can be legitimate. Shaming in part means loss of privacy. In contemporary society, media are a method of inflicting shame. Media are the modern pillory. Discreditable personal information, whether or not accurate, can be assembled and dissimulated so swiftly and so widely that it cannot be retrieved, nor can it be comprehensively amended if necessary to clarify or correct it. The person to whom the information relates is marked indelibly." This is part of the reality, honourable senators. By adopting this code, we are doing the right thing on the basis that we have been able to ensure that the rights that we enjoy as citizens and senators under the Charter are well reflected in the various sections of the code as much as the status of the SEO and that the status and rights of the chamber are well reflected in the code.

• (1550)

Certainly, this is not the end but rather the beginning. It will be adapted progressively to our situation. I am sure that each senator who has attended the meetings of the Standing Senate Committee on Rules, Procedures and the Rights of Parliament is aware of this. I am indebted to the Chair of the Rules Committee, the Honourable Senator Smith, because on many occasions we tested his patience, but his good humour never waned. On a few occasions, we crossed the bar over some issues, but it was done with the greatest of respect for one another and a true commitment to come forward with a balanced code. The code will need to be reviewed over time to adapt to the various issues that will arise. I thank all those associated with the exercise and especially the Law Clerk and Parliamentary Counsel, Mr. Mark Audcent, who has worked with me in developing more than 20 amendments to the original draft so that the code better reflects those shared principles of this chamber. Honourable senators, I am most grateful for your attention.

Hon. W. David Angus: Would the honourable senator take a question?

Senator Joyal: Yes, Senator Angus, but I have exceeded the time allowed so I will request leave to continue.

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

Some Hon. Senators: Agreed.

Senator Angus: I commend Senator Joyal on a fine exposé of this complicated code, which is of fundamental interest to all senators. My question flows from his statement about how important it is for senators to maintain their rights to discipline their peers and to not water down this basic right in an effort to comply with Bill C-4, which is the enabling and governing legislation. I do not know whether the honourable senator is sure, if I may put it to him that way.

[*Translation*]

Can he assure us that we are fully protected in our rights of oversight in terms of the discipline of senators?

[*English*]

Senator Joyal: I thank Senator Angus for his question. Senator Furey has been a tremendous help to the committee by bringing its attention to the status of the special committee created by the code. In the various steps taken when an allegation occurs and when an initiative is taken by the SEO on the basis of an allegation, it is important for the committee to remain in close contact with the SEO. We did not want to create a "Kenneth Star." I cannot be clearer than that. We did not want to create an SEO whose main responsibility is that of permanent investigator of each senator 12 hours per day and four days per week when the Senate is sitting. That was not the intention of the original draft. I want to be clear on that point. Rather, we wanted to be considerate of the relationship between the committee and the SEO, while allowing the SEO to perform his mandated duties to maintain his credibility. We wanted to ensure that the senators would remain the judges of our peers. Senators were elected to the committee to exercise that extraordinary responsibility of maintaining the balance between the autonomy of initiative and role of the SEO and our capacity as a chamber.

That is the final litmus test. Does this chamber have the last word on the report or the recommendation of the SEO, or does the last word belong to someone who can take the report to a press conference across the street to declare what he has found about the Senate so the public can tear it apart? We did not want to allow that. We have been very careful to craft a balance between the status and autonomy of the SEO and the role of the committee.

Senator Furey has been helpful in drawing the attention of the members of the Rules Committee to the various elements that needed to be fixed.

Senator Angus: I appreciate that answer, Senator Joyal, which points to how much senators owe the honourable senator for having attended those 26 meetings and for following the devolution of the code from its original draft form to what is before us today.

I will iterate a question that has been posed to me, and perhaps to others in the chamber who are practising lawyers. The issue seems to be that the creation of this committee is fundamental to the operation of the code. There will be a tremendous onus on that committee, which will act as a buffer to protect senators from an overzealous SEO, even a rogue SEO, or an unpleasant environment. That situation could evolve and happen, as we have seen in the GST debate when things went off the rails. Is Senator Joyal comfortable that having five of our colleagues, who have their other duties to perform for committee and otherwise, is a safe solution to carry out this surveillance role and to ensure that the rights of the chamber to have the last word on disciplinary matters will be protected?

Senator Joyal: When I first reflected on how we should compose the committee, I thought that the members should be senators holding a position in the Senate. I thought of the Leader of the Government, the Leader of the Opposition and their deputy leaders, because they are usually more senior to some other senators in that they have had some experience in the house. Their vision tends to be broader because they take care of their respective sides and they exercise a position of responsibility in the Senate as well. My first reaction was to entrust those senators with the responsibility of being members of the committee.

However, the Rules Committee did a better job in this determination. I say that candidly because the committee accepted, and was strongly of the view, that the members of the committee should be elected, which is unique in this chamber. There is no committee where members are elected by secret ballot, because we have the Senate Committee of Selection. We know the rules and the leaders meet. There might be negotiation and sometimes consultation, but the authority lies within the leadership.

By electing the members to this new committee, we are taking responsibility for ourselves. Senators who vote to elect someone to the committee are taking responsibility for potential future judgments by their peers.

• (1600)

By electing the members of the committee, we take individual responsibility. In other words, if I decide to vote for X or Y, I take the onus upon myself to decide who I will trust with that responsibility in relation to a situation where I might be the one who will have to be judged by my peers one day.

In having the two sides elect the members of the committee, and by having those four senators choose the fifth member, there is a better balance. On the whole, it is a better solution because it calls upon our individual responsibility to decide who among us shall be the person we entrust with that responsibility.

Therefore, I gladly withdrew my suggestion and supported the proposal that the members of the committee should be elected through a secret ballot. That way, there is no politicking, although anyone can say that they want to be on the committee. In terms of the composition and functioning of the committee, this proposal seemed to be more reliable.

I am sure that any senator who is elected or selected that way will feel a great trust and personal responsibility to other senators. He or she will have been chosen by a secret ballot. I think that is the only way to maintain the confidence of senators. For example, if I have to go before that committee, I will know that those people are independent. Do not forget that independence is a key quality for anyone who sits in the position of judge over his peers.

I believe the solution proposed in the committee report should satisfy the queries of the honourable senator.

Senator Angus: I thank the honourable senator for that response. I agree with him, but as I say, a very onerous responsibility is being delineated for these folks. There may not be a big list of people putting their names forward to be voted on in a secret ballot. Let us hope it works.

I think the proposed solution is an admirable compromise. I hope that from our ranks we will find five senators willing to serve and worthy of our trust in that regard.

My last question has to do with the SEO. We have an SEO in place. I believe the individual is already showing some due diligence in meeting us. Can my honourable friend clarify what control we have over that individual if, God forbid, a rogue SEO gets out of control? How quickly can he be reined in and what is the process?

Senator Joyal: As I mentioned previously, the SEO makes recommendations to the committee at the last stage of his responsibilities. The committee, the peers, holds the decision. The SEO's role under the act is quite clear. Subsection 20.5(3) states:

> The Senate Ethics Officer shall carry out those duties and functions under the general direction...

"General direction" has a meaning. In other words, the SEO has autonomy of action, but the general direction, the orientation, rests with the committee. The enabling legislation does not establish an officer of Parliament. We have claimed that the SEO is an officer of Parliament. If he is an officer of Parliament, he is within Parliament. He is not an investigator outside a bureau somewhere with no link to Parliament. He is one of us. He shares our common responsibility on disciplinary issues, and the bill says that the Senate Ethics Officer enjoys the privileges and immunities of the Senate and its members when carrying out those duties and functions. He is certainly in the institution of the Senate. That is what the bill says.

In crafting the role of the committee, we were very concerned, when we gave the SEO authority to conduct an investigation, that he have the capacity to do the investigation. However, in respect of due process and the rights of the senator, and at the end of the process when it comes time to receive recommendations, the decision is made by the committee which then reports to this chamber. In other words, this chamber remains the last legal authority on decisions taken by the committee.

I should like to add one other important element. We are not entrusting five senators to sit on the committee to do whatever they want with any of us. That is not the intent. The committee sits, listens to the reports of the SEO and then reports to the chamber as a whole. It is up to this house, through a motion, to accept the report of the committee. A gradation of steps in the process maintains the disciplinary role of the chamber.

Honourable senators, in adopting this code, we will have helped the other place. Frankly, I think they will have problems in the other place; sooner or later, there will be a conflict. It will be politicized. We see that in the first decision of the Ethics Commissioner, which is the object of a major controversy. There is a threat to bring him to court.

This is a lesson to us, too. We do not want the first problem that our SEO has to deal with to end up in court. We must have a system of better balance. I think all of us have tried to put the best of our minds and experience into drafting the code and agreeing upon a system that is workable.

As I said, it will be difficult. I cannot say that we will never have a problem. We know it. It is politics. On the other hand, it is politics in respect of the true principle of our institution and the Charter.

Hon. Jerahmiel S. Grafstein: Honourable senators, I first wish to commend Senator Joyal for that magnificent exposé, as Senator Angus put it, of the principles underlining this code. Senators will know that I was very unhappy with the word "ethics" because I think it is a misnomer. When I look at the Order Paper, I notice that we are calling this a conflict of interest code, which makes more sense to me.

Senator Joyal has been very much involved in this process from day one. He knows my concerns. This chamber is not a chamber of confidence. This is an independent chamber above politics, yet at the same time within politics given the nature of our appointments.

The new committee will have debates of course, but the committee's conclusions will not be as partisan as in the other place because we are not a house of confidence. Therefore, we should preserve for ourselves our independence and the privileges granted to us under the Constitution.

With that preamble, is my honourable friend now satisfied that this code of conduct will not unduly restrict or inhibit a senator's constitutional duties of independence? Can a senator be active in the business, social, educational and religious life of his region to better reflect those collective and individual interests here in the Senate?

Senator Joyal: When the honourable senator was asking his question, I was thinking of some of the interventions that he made on the previous bills, which were Bill C-34 and Bill C-4.

Section 2 of the code contains a statement of short principles that address the concepts that the honourable senator has just outlined.

• (1610)

I will read it:

> 2(1): Given that service in Parliament is a public trust, the Senate recognizes and declare that Senators are expected
>
> (*a*) to remain members of their communities and regions and to continue their activities in those communities and regions while serving the public interest and those they represent to the best of their abilities;
>
> (*b*) to fulfil their public duties while upholding the highest standards so as to avoid conflicts of interest and maintain and enhance public confidence and trust in the integrity of each Senator and in the Senate,

In other words, the code almost orders you to continue to be involved in your community. However, in order to prevent you from creating a blurring of interest, you are requested to declare what kind of position you hold in charities and non-profit corporations, on university boards, on religious boards, on any professional board, on any financial board, that is, on any board where you have a responsibility, so that the public knows where you are active. That does not mean that a senator who does not report holding positions on such boards would seem to be non-active. I do not want to infer that at all.

On the other hand, a senator who is active in that capacity, because of his or her experience, whether it is professional, family or personal, has a duty to maintain that kind of relationship. The problem with section 14 and 15 of the previous Parliament of Canada Act was that the interpretation was too restrictive to allow us to continue that kind of work. When I was sworn in as a senator, I was advised that the position I held at the Canadian Centre for Architecture as an eminent trustee of the centre since its foundation, was in conflict with my position in the Senate. I resigned, which I thought was silly because the centre is public. Anyone can have access to the books. Anyone can know where the money comes from when the centre publishes its annual report. It deprived the centre of my commitment and support. I remained committed, but no longer on the board. I think it is wrong, because all of us are members of charities and we are asked to be patrons of honour of one subscription campaign or another. We were involved in so many activities that we were deprived of by the interpretation given to section 14 and 15 to remain above suspicion. This code solves that problem.

In other words, once positions are declared, the public will know where senators are active in their private capacity, in their religious, professional, charitable, social, or community activities, and they will be invited to remain committed.

As soon as this code is adopted, I will phone the Canadian Centre of Architecture and say that, like it or not, I am back as a trustee.

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, I have always said, and will continue to say to the end of my days, that honesty cannot be legislated. You think I am opposed to a code of ethics. We have the Criminal Code and just about everything we need to legislate. However, modern life demands that we have a code such as the one before us. I continue to believe that honesty cannot be legislated.

I congratulate Senator Joyal, who, as always, presents remarkable arguments. I sat with him in the House of Commons. He has not changed; his approach is always impeccable.

Two or three points, however, trouble me, and I mentioned them to him yesterday. Family, common-law spouse and family member are all defined. Paragraphs 20.1 and 20.2 of section 20 suddenly introduce a new concept: "...a senator may accept for the senator and guests of the senator...," but "guest" is not defined. That is my first point.

I know that Senator Joyal has an answer. I would like it repeated for the benefit of all my colleagues.

[*English*]

What is more annoying for us is the way it is written. It is as if Senator McCoy, Senator Ruth, Senator Atkins, Senator Doody, Senator Murray, Senator Pitfield, Senator Rivest, Senator Dyck, Senator Plamondon and I are non-existent. We do not exist, because it says that in this committee of five people, two will be elected in a secret ballot. I want you to know that I have always been lucky in secret ballots. I was elected Chairman of the Quebec Liberal Caucus seven times. If it had been a show of hands, I would never have considered running. I was also elected in a secret ballot against Sheila Copps. As I said once, I do not suggest people run against me. She ran against me. It was an unbelievable defeat for my esteemed friend Ms. Copps, in a secret ballot.

Now, the honourable senator suggests that two will be elected in a secret ballot by the government, two will be elected by the official opposition in a secret ballot, and the fifth will be elected by the four others after they have been elected. As soon as the two parties elect their people, they will elect one from across the board, who will become the fifth.

First, there are 37 women in the Senate, and I would hope that some of them would say I have a point. I am afraid that there will be no women on that committee.

Senator Stratton: Wait a second.

Senator Prud'homme: Each one is entitled to his own interpretation. If you read the French version you would think there are only men in the Senate anyway. If you read the French version from page 1 to the end, you really believe that there are only men in this institution.

I believe that it is dangerous. There are 11 non-affiliated senators — we are not in opposition. I do not think Senator McCoy, Senator Ruth or others are opposition members. We have decided for many reasons to sit differently in the Senate. At no time is that taken into account. There are seven vacancies and there are rumours that there will be more independents in the Senate. I do not like this committee of five. I would rather be at the mercy of a good ethics commissioner. Honourable senators have decided and I will not go further.

I will make a suggestion that the fifth member of the committee should be elected in a secret ballot by the entire Senate, in the same way as they elect the Speaker in the other chamber. That way, honourable senators will know who the four are, and then they will elect the fifth member from the full Senate. Honourable senators would go by elimination, the same way as the Speaker in the House of Commons is elected. Any senators who would like to be the fifth member do not withdraw their names. That means that every senator would be a candidate, except for those who withdraw their names. Of course, the Speaker will withdraw his name. Of course, the two who are elected in a secret ballot will withdraw their names. The others from the opposition will withdraw their names, and a multiplicity of people will withdraw their names in writing. Who will be left at the disposal of the Senate, to make everyone have a feeling of equality where no one will be left out and non-aligned? Eleven of us will bow out graciously, saying there are limits to our power or the way we could be elected. At least this should still be considered before being accepted by the Senate. I am concerned. There is someone on my side who seems to be bored with my arguments, but it is very important.

• (1620)

As well, I hope someone will revise the French version, to make it a little less macho than it is at the moment. The way it reads in French, I felt as though I were back to the time of my arrival here in the Senate, from the House of Commons, when there was only one woman here in the Senate.

The definition of "trip" is another messy question senators will have to agonize over. Honourable senators need to develop some institutional memory. There will be problems vis-à-vis the definition of "official parliamentary associations," official but not funded, official but funded, and unofficial, unfunded. I have been trying to give my soul to the service of Senator Furey, at his request, as a non-member of the Joint Interparliamentary Council.

[*Translation*]

There are differences of opinion on the definitions. Eventually, we will run into problems. I find it odd that section 20 — you are a very meticulous lawyer, as are Senator Angus and others — provides no definition for the word "guest." The word appears out of the blue.

Unless Senator Joyal can make a suggestion, I will request a vote. If there are only two of us, then so be it. At least we will be on the record, even if there is an outcry. I do not get worked up over public opinion. I try to inform the public.

[*English*]

I do not get nervous about public opinion, that the press might write badly about me or us. If I feel I have done my duty, I can cope with the press or with whomever it is that would like to make us look bad. However, before senators are made to look bad, I should like to ensure that we try to do the best.

I am not satisfied. I do not speak on behalf of the 11 independents, but I am certainly speaking for Senator Plamondon, who has authorized me to do so. There is a discomfort about the secret ballot and the secrecy. There is something strange about eliminating from the very beginning 11 of your own colleagues so that they do not count. Senator McCoy and others do not count. We will not be consulted.

Senator Stratton: You could be chair.

Senator Prud'homme: I should like to know how we would be consulted.

Senator Angus: That was a long question.

Senator Joyal: I will address the two issues Senator Prud'homme raised. First, on the definition of "guest," I will refer to section 20 for the benefit of senators, so that we know what we are talking about. Section 20 is titled "Statement: sponsored travel." We are talking about travelling.

> 20(1) Notwithstanding subsection 19(1), a Senator may accept, for the Senator and guest of the Senator, sponsored travel that arises from or relates to the Senator's position.

It is totally correct, as Senator Prud'homme said, that there is no definition of guest. If there is no definition of guest, as a lawyer, I would go to the Interpretation Act. I have looked into the Interpretation Act, and there is no definition of guest there. The Interpretation Act, of course, is the dictionary we use to interpret statutes and regulations of Parliament. Failing that, we go to the Oxford English Dictionary or to Larousse, or others. What is the definition of "guest" in the common dictionary? I will give that to you from memory. It is a person who is invited and is offered a service without charge.

Let us take an example. Let us suppose I invite someone to a hockey game. What is really happening? I offer the individual the opportunity to attend a hockey game. Of course, since I issued the

invitation, I would pay for the ticket. I might even send a driver to pick my guest up at his residence and drive him back home. I might even entertain my guest at the bar between periods. I might even ask my guest to join me for a late dinner. The individual is my guest.

Senator Rompkey: Sounds like more than that.

Senator Grafstein: Sounds good to me. Best offer I have had today.

Senator Stratton: Stop there.

Senator Joyal: I will stop there. Thank you, Senator Stratton. As my father would say, we are in need of morality here.

What is it essentially? It is a benefit that, through our position we offer to another person without that person having to pay for it. That is essentially what a guest is. When we read that section and see the word "guest", it could be a family member. My guest could be my spouse or my common-law partner. It could be my son who is over 18 years old. It could be my other children who are under 18. It could be my brother. It could be any one of my family. It could be my assistant whom I want to reward for all his good work. It could be anyone we feel has an interest in the subject of the conference I am invited to attend. It could be anyone that I offered the opportunity to join me in a trip that is sponsored, that is paid for not by government but by other funds in the private sector.

That section covers a greater number of persons. The previous section talks only about gifts or benefits that are limited to family, and, as clearly stated, "family" is well defined in the definition section of the code. This covers more. It is of much wider application than the previous section.

We discussed this at committee. I believe Senator Milne and Senator Fraser raised that question at the time. It was dealt with in the context of inviting friends who had no relationship directly to the family. That happens. In other words, we wanted to ensure that that section would be effective. That is essentially why we used the word "guest."

The honourable senator's second point was how we should select the fifth member of the committee as a Senate, as an institution. Section 37(4), which deals with the election of members, reads as follows:

> Two of the Committee members shall be elected by secret ballot in the caucus of Government Senators at the opening of the session; two of the Committee members shall be elected by secret ballot in the caucus of Opposition Senators at the opening of the session; the fifth member shall be elected by the majority of the other four members after the election of the last of the four members.

What is the majority of the four members? It is three members. In other words, the government majority alone cannot select the fifth member because it needs a majority of the four. Automatically, the opposition must join on the selection of the fifth member because three votes are needed. The government has two votes. In other words, the fifth one must be a consensual candidate among the two main parties.

What would happen if we accepted Senator Prud'homme's proposal to elect that person in the chamber? It is not guaranteed that the senator who would be elected as the fifth candidate would be supported by the majority. In strict terms, look at the present composition of the Senate. The government has 60 or so positions, and the opposition has 20 or so. There is no doubt that if the government side decided on the fifth member for whatever reasons, we would impose the fifth member. I have a problem with that because I think the committee should have the confidence of all sides. The way to maintain balance in our system is by giving a say in the third vote to the opposition. In that way, we can guarantee that the fifth member will be accepted by all; in other words, someone, from whatever side, who can fill that position in a non-partisan way.

• (1630)

The senator has raised a very important question. We debated this issue and were concerned that, when the fifth member was selected, the government would hold the majority on the committee. We wanted to maintain an equilibrium between the sides. The proposal may not be perfect, but it ensures that the fifth committee member is someone acceptable to both sides of the chamber.

Section 37(4) says that the fifth member shall be elected by the majority of the other four members after the election of the last of the other four members. This was done to maintain the equilibrium.

The Hon. the Speaker: Simply as an observation, honourable senators, the rules provide for comments and questions. The last intervention under comments and questions took almost 20 minutes, which is longer than the normal allocation of time for speaking.

Senator Prud'homme: I profoundly disagree with the interpretation of our esteemed colleague Senator Joyal on the election of the fifth member. That would put the 11 independent senators at the mercy of the first four members of the committee. There is no chance for an independent senator to represent the other independent senators. I would like to be able to recommend one of the 11, although that does not mean that person will be elected. This puts the 11 of us at the mercy of the four who will be elected in a secret ballot, probably after having campaigned or having been either selected or canvassed by their own parties.

Either every senator is equal or every senator is not equal. I may be wrong, but this is the beauty of debating.

[*Translation*]

This creates a certain inequality among senators. I will elaborate on this tomorrow.

[*English*]

Hon. John G. Bryden: Honourable senators, I want to say to everyone who has been involved in this long process, particularly the members of the Rules Committee, that this matter has progressed greatly, and I will be pleased to support this proposition.

If we waited until we thought we had a perfect code, we probably would never arrive at our goal. However, a review process is built into the process and senators must be prepared to ask for that review when the time comes.

Further to the concern that Senator Angus expressed, with the bill and this set of rules we are moving from what was, when many of us joined this institution, an honour-based system for the conduct of senators to a rules-based system. There are all kinds of reasons for that shift, not the least of which is that the media and the public demand it.

By electing from among all the members of the Senate four members of the committee who will, to a large extent, supervise this system, and by having those members, or perhaps the whole Senate, choose the fifth member, and by having that committee make the final decisions to investigate senators or activities, I believe that we retain at least a vestige of the honour system we formerly had. By choosing the most honourable, trustworthy and capable among us, we will end up with the best of both worlds.

I share some of the concerns of Senator Angus, if I have interpreted them correctly, vis-à-vis the relationship between the Senate Ethics Officer and the committee. It is clear that the committee makes the judgment and reports to the Senate. If the Senate Ethics Officer conducts an investigation and feels compelled to bring the case to the attention of the public even though the committee or the Senate disagrees, are there rules that would prevent him from doing so? It is not possible to prevent a rogue officer from doing whatever he decides to do, but who is in the position to sanction a Senate Ethics Officer who goes beyond his mandate?

We cannot fire him, because we did not hire him. We cannot suspend him, because he is not our employee.

All the officers of Parliament were created as servants of Parliament, yet in many instances people wiser than I have expressed the belief that Parliament has ended up being the virtual servant of the officers or in the control of the officers.

• (1640)

Senator Joyal: In considering that important question, I asked myself what our relationship is to the SEO versus our relationship to the other officers of Parliament; that is, the Auditor General, the Commissioner of Official Languages, the Privacy Commissioner, the Information Commissioner and the Chief Electoral Officer. I concluded that the Senate has greater capacity to manage initiatives of the SEO than it has to manage initiatives of any other officer of Parliament. In answer to the honourable senator's question, section 46 of the draft code reads as follows:

> (1) The Committee shall take into consideration a report received from the Senate Ethics Officer under section 45 as promptly as circumstances permit.
>
> (2) The Committee shall provide, without delay, a copy of the report of the Senate Ethics Officer to the Senator who was the subject of the inquiry, and shall afford that Senator the opportunity to be heard by the Committee.

The next heading is "Investigation," and that is where the committee has a responsibility:

> (3) In considering a report, the Committee may:
>
> (*a*) conduct an investigation; or
>
> (*b*) direct that the Senate Ethics Officer's inquiry be continued and refer the report back to the Senate Ethics Officer for such further information as the Committee specifies.

Finally, following its consideration of the report of the SEO under this section, the committee shall report to the Senate. In other words, there is a clear element of initiative of consideration by the committee over a report of the SEO. It is quite well spelled out in the draft code.

The honourable senator's question goes beyond that; that is, what would happen if there were a major conflict between the SEO and the committee? In my opinion, section 4 and the general section dealing with the committee provides for that, namely, that the SEO act under the general direction of the committee. That is provided for in the bill. The enabling legislation is proposed section 20.5(1), which states that the Senate Ethics Officer shall perform the duties and functions assigned by the Senate for the governing of the conduct of senators.

It is clear that the committee and the Senate take the decision. With respect to whether there is a conflict, I will refer you back to the bill. Section 20.2(1) of the act states as follows:

> The Senate Ethics Officer holds office during good behaviour for a term of seven years and may be removed for cause by the Governor in Council on address of the Senate.

In other words, in the event of a major conflict between the two, the Senate would have the opportunity to adopt an address to the Governor General so that the SEO be removed.

There is a symbiotic relationship between the draft code and the act. Your question might appear theoretical, but in the Northwest Territories, I believe, there was a case of a conflict between the ethics officer and the legislature that went to court, and the court resolved it.

In other words, it is not totally theoretical, but the system provides a way for us to avoid going to court. As I say, it would be a mistake for us not to resolve it within the institution of Parliament and go to court instead. When we are exercising a disciplinary function, it is one of the rights and responsibilities of Parliament. The ethics officer can also resign, of course.

Hon. Francis William Mahovlich: Duff Conacher is the coordinator of Democracy Watch, an organization that watches the Commons, the Senate and everything that goes on in Parliament. I am not sure how they are funded, but I know that it is controversial, and he might have a conflict of interest. I am not quite sure.

Mr. Conacher commented that the ethics regime is a joke. Did Democracy Watch make any recommendations to our committee?

Senator Joyal: It might be for Senator Smith to answer, because he was the chair of the committee. As I say, I attended every meeting of the committee, and I never heard Duff Conacher testify on the draft code as a representative of Democracy Watch. The opinions of Democracy Watch are well known. I quoted an article earlier from the *Ottawa Citizen*. Democracy Watch makes a profession of trying to discredit Parliament and parliamentarians. They are entitled to their opinion — freedom of expression — but we are also entitled to our reputations, as I said earlier.

Privacy remains a right for us. If our reputation is at stake, we have the means to defend our reputation. That is why I raised the issue of financial support earlier. When we establish a system, the system must be balanced. Justice cannot be essentially dependent on the means of a person, and I have seen many instances in the past years with respect to senators on both sides of this chamber. I recall the situation of former Senator Ghitter who sued and won. I personally sued, and I got a fair settlement.

There are other senators who are suing whose cases are still pending in court. As I said, Democracy Watch is entitled to its opinion. It will discredit the other place as it will discredit our place. All citizens in this country are entitled to their opinion, but when they so exercise their freedom of expression, I do not think we should abandon our right to fair treatment. That is why I think this system provides for fair treatment.

Senator Mahovlich: Thank you, senator.

Senator Angus: Good question, good answer.

Hon. Joan Fraser: This is, as I suggested, a follow-up to Senator Bryden's question. As I understood him, he was concerned about the case that would arise if an SEO felt impelled, for whatever reason, to make public matters that should be kept confidential.

I wonder whether Senator Joyal would agree with me that we have, in fact, a belt and suspenders in this case. We have not only the general provision in the Parliament of Canada Act, but also a further reference to that in the code. Unfortunately, the version of the code that I have is the second-last version, so the numbering of my paragraphs is not exactly the same, but it is the third-last section of the code, which says, in part:

> ...the Senate Ethics Officer shall keep confidential all matters required to be kept confidential under this Code. Failure to do so shall constitute behaviour sufficient to justify either or both of the following
>
> (a) a resolution by the Senate...requesting the Governor in Council to remove the Senate Ethics Officer from office.

Would that not wrap the whole thing up and tie it with a nice bow?

Senator Joyal: Exactly. I would be tempted to say that not only is it a belt and suspender, but it is buttons, too. Men's clothes are designed whereby via an inside button they can make sure their shirt is stuck to their pants.

As I said earlier, the issue of confidentiality is a key issue. It was a concern of many senators. Confidentiality is the basis of the trust that we will have in the SEO. If we enter the office of the SEO or we file our form to the best of our knowledge, as Senator Bryden said, with our honour and good faith, and we have the smallest suspicion that it will be part of a public debate whereby the SEO will take it like a football and run it across the field of media, none of the members of the committee would have liked that and would have felt that was a fair system.

• (1650)

That is why the provision that Senator Fraser has just quoted links the code to the act by mentioning the act clearly in the rules. Besides that, we have added to the original draft, which Senator Fraser will remember very well, the confidentiality nature of not only the SEO but the personnel of the SEO.

Let us not fool ourselves. We live in the world of computers. Imagine that there is a disk in the SEO's office containing information about all of us and someone breaks into the system. Where is the confidentiality? To make sure that the SEO could not say: "I am sorry, it was not me, it was my agent and he or she acted outside the instructions that I gave him or her," we have included specific sections in the code whereby the confidentiality obligation rests on the SEO, his or her personnel and the people who contract for the SEO. As you know, you have seen it in the other place, contracts will be granted. All contractors will have the same responsibilities of confidentiality with regard to what we have disclosed in order to maintain trust in the system.

Hon. Tommy Banks: We were talking about disclosure, honourable senators. My wife is a theatrical agent who represents about 250 performing artists. From time to time, she signs contracts on their behalf with various agencies of the Government of Canada.

One of the provisions of the present code before us requires disclosure of those transactions, subject to reasonable inquiries being made. That is the language. I have made reasonable inquiries, and I will not tell you what the response was because I would be ejected from my seat if I were to do so. Further inquiries in that respect will be made at some risk to my person.

Senator Day: That seems reasonable.

On motion of Senator Angus, debate adjourned.

THE SENATE

MOTION TO AMEND RULE 32—
SPEAKING IN THE SENATE—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Corbin, seconded by the Honourable Senator Cook:

That the *Rules of the Senate* be amended by replacing Rule 32 with the following:

"32. (1) A Senator desiring to speak in the Senate shall rise in the place where that Senator normally sits and address the rest of the Senators.

(2) Any Senator who speaks in the Senate shall do so in one of the official languages.

(3) Notwithstanding subsection (2), a Senator desiring to address the Senate in Inuktitut shall so inform the Clerk of the Senate at least four hours before the start of that sitting of the Senate.

(4) The Clerk of the Senate shall make the necessary arrangements to provide interpretation of remarks made in Inuktitut into the two official languages.

(5) Remarks made in Inuktitut shall be published in the *Debates of the Senate* in the two official languages, with a note in the *Journals of the Senate* explaining that they were delivered in Inuktitut."—(*Honourable Senator Stratton*)

Hon. Terry Stratton (Deputy Leader of the Opposition): Honourable senators, I had adjourned this motion in my name to survey our caucus as to whether any of them would like to speak to this issue. As far as our side is concerned, we are happy to see this motion go to committee.

The Hon. the Speaker: Honourable senators, are you ready for the question?

Hon. Senators: Question!

Hon. Bill Rompkey (Deputy Leader of the Government): I wonder if we could clarify that the intent here is to send the subject matter to committee before a vote on second reading. If there is agreement on that, then I would be prepared to make that motion.

Senator Stratton: It is not a bill.

The Hon. the Speaker: That is not where we are at.

Hon. Eymard G. Corbin: Is not the subject matter the motion itself?

Senator Stratton: It is the motion itself; no bill.

The Hon. the Speaker: Are you satisfied, Senator Rompkey, that your concern is dealt with by the wording of the motion itself?

Senator Rompkey: Yes.

The Hon. the Speaker: It was moved by the Honourable Senator Corbin, seconded by the Honourable Senator Cook, that the *Rules of the Senate* be amended by replacing rule 32 with the following —

Shall I dispense?

Senator Stratton: You are not going to adopt the motion. You send it to committee.

Senator Robichaud: This is what we are doing right now.

Senator Stratton: As I said, our side is happy to see this referred to committee for study.

Senator Robichaud: Make the motion.

Senator Stratton: I would suggest that the mover of the motion, Senator Corbin, do that.

REFERRED TO COMMITTEE

Hon. Eymard G. Corbin: I move that the motion be not adopted now, but that it be referred to the Standing Senate Committee on Rules, Procedures and the Rights of Parliament.

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

Motion agreed to.

[*Translation*]

ISRAELI-PALESTINIAN QUESTION

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Prud'homme, P.C., calling the attention of the Senate to the Israeli-Palestinian question and Canada's responsibility.—(*Honourable Senator Prud'homme, P.C.*)

Hon. Marcel Prud'homme: Honourable senators, since we never know what the future may hold and since this is the fourteenth day for this inquiry on the Order Paper, I am afraid that, should I not be here tomorrow, this debate will be over.

There are some extraordinary developments in the Middle East, some of which we like and some of which we do not. I would not want any of my remarks or my providing background concerning this inquiry to be held against me. That might prove extremely disagreeable for some.

With your leave, and hoping I am well-advised, I move that this order be allowed to stand.

[*English*]

I move that this item stand in my name for the rest of my time.

The Hon. the Speaker: It is moved by the Honourable Senator Prud'homme, seconded by the Honourable Senator Fraser, that further debate be adjourned to tomorrow for the balance of Senator Prud'homme's time. Is it your pleasure, honourable senators, to adopt the motion?

On motion of Senator Prud'homme, debate adjourned.

The Senate adjourned until Wednesday, May 18, 2005, at 1:30 p.m.

CONTENTS

Tuesday, May 17, 2005

Available from PWGSC – Publishing and Depository Services
Ottawa, Ontario K1A 0S5