



CANADA

Debates of the Senate

1st SESSION

•

38th PARLIAMENT

•

VOLUME 142

•

NUMBER 64

OFFICIAL REPORT
(HANSARD)

Tuesday, May 31, 2005



THE HONOURABLE DANIEL HAYS
SPEAKER

CONTENTS

(Daily index of proceedings appears at back of this issue).

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 31, 2005

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

Prayers.

SENATORS' STATEMENTS

SUPREME COURT OF CANADA

DECISION ON *CANADA (HOUSE OF COMMONS) V. VAID*

Hon. Serge Joyal: Honourable senators, on Friday, May 20, the Supreme Court of Canada released its unanimous decision in the *Canada (House of Commons) v. Vaid* case. On the surface, this case was about a human rights complaint involving the House of Commons and former Speaker Parent, who was alleged to have constructively dismissed his driver, Mr. Satnam Vaid, for reasons based on race, colour and national or ethnic origin. In reality, this is a landmark decision of the Supreme Court with respect to parliamentary privilege.

Honourable senators will recall that Senator Mobina Jaffer and I were granted intervenor status by the court. We decided to take this unusual step to support the respondents, Mr. Vaid and the Canadian Human Rights Commission, because we thought it essential that both Houses of Parliament, as a matter of principle, should be obliged to respect the human rights of their employees.

The appeal to the court by the House of Commons and the Speaker was centered on the constitutional question stated by Chief Justice McLachlin. The question asked whether the Canadian Human Rights Act is inapplicable to the House of Commons and its members with respect to parliamentary employment matters as a consequence of parliamentary privilege.

Two years ago, the Standing Senate Committee on Rules, Procedures and the Rights of Parliament studied the issue raised in the *Vaid* case but made no recommendation. However, some of the expert testimony heard by the committee during its study, which was subsequently published as a separate report, was of key importance in the preparation of our factum, drafted with the assistance of our legal counsel, Mr. Dale Gibson of Alberta.

We maintained that a claim to an historic parliamentary privilege must be founded on section 18 of the Constitution Act, 1867, and on section 4 of the Parliament of Canada Act, both of which limit our privileges to those held by the U.K. House of Commons. "The management of employees" has never been acknowledged as a privilege at Westminster by its parliamentary authorities or by the British courts. In addition, the power to manage all employees does not merit the status of privilege in Canada because it is not necessary to the effective conduct of the "proceedings of Parliament" or its "internal affairs."

We held that Parliament should not be considered a statute-free zone, exempt from the Canadian Human Rights Act and, therefore, employees of the Senate and of the House of Commons

should be entitled to the protection of this important, quasi-constitutional statute.

Honourable senators, the Supreme Court's unanimous decision accepted virtually all of our arguments. The court referred directly to our factum in paragraph 58. Moreover, the court's decision contained a detailed analysis of the "doctrine of parliamentary privilege" that will be of great assistance to Parliament in the future.

The court also decided that Mr. Vaid's complaints should be considered under the Parliamentary Employment and Staff Relations Act. It concluded that the grievance procedure in PESRA is a proper mechanism to review these complaints founded on the Canadian Human Rights Act.

Before concluding, Senator Jaffer and I would like to express our sincere gratitude to the honourable senators who contributed to the costs associated with our intervention: Senator Michael Pitfield, former Senator Richard Kroft and Senator Wilfred Moore.

We invite all honourable senators to read this important decision and share with us in the satisfaction of knowing that the Canadian Human Rights Act does protect the employees of Parliament, whether they work in the Senate, the House of Commons or the Library of Parliament.

CANADA'S LEVEL OF LITERACY

Hon. Donald H. Oliver: Honourable senators, I was shocked to read an editorial in *The Globe and Mail* on May 23 that stated: "Canadians are not ready for the information age, because our literacy skills are simply not strong enough."

That was the conclusion of a new survey on literacy in Canada and six other well-off countries that was commissioned by the United States National Centre for Education Statistics and the Organisation for Economic Co-operation and Development. According to the study, "forty-two per cent of Canadians between 16 and 65 did not reach the level of literacy considered necessary to thrive in modern society." Even worse, Canada scored about the same in 2003 as it did almost one decade earlier, in 1994.

The report found that roughly "4 in 10 Canadians lack the skills needed to give themselves and their families a decent life." Those living on native reserves and in ethnic communities were excluded from the survey — "if they hadn't been, Canada might have performed even worse."

In one sense, honourable senators, one could argue that the glass is really half full because Canada scored "no worse than third out of the seven countries surveyed." However, given the demands for productivity placed on Canadian business and industry in today's information age, we cannot afford to accept mediocrity. Nations who do not focus on productivity do so at

their peril. According to Mr. Andrew Sharpe, Executive Director of the Canadian Centre for the Study of Living Standards, enhancing productivity should be “a nation’s economic destiny.”

Mr. Sharpe shocked members of the Standing Senate Committee on Banking, Trade and Commerce on May 11 when he revealed that Canada has had virtually no productivity growth in the last two years, measured on an output-per-hour basis. He told the committee that Canada’s relative level of business-sector productivity vis-à-vis the United States has plummeted from 81 per cent in 2002 to 74 per cent in 2004.

Mr. Sharpe put it to the committee like this:

If we have a 1 per cent productivity growth, we will see living standards double in 70 years. If we can raise productivity growth rate to 3 per cent, we will double in 24 years. If we can attain 2 per cent productivity growth over the next 30 years, all the problems related to aging in terms of the cost of health care and pensions will pretty well evaporate.

Honourable senators, it all starts with basic literacy skills and with equipping Canadians with the basic technological skills necessary to succeed in today’s information age. Forty-two per cent of Canadians aged 16 to 65 do not have the literacy skills required for full participation in our knowledge economy. This situation is simply unacceptable. We must do better.

INTERNATIONAL POLICY STATEMENT

Hon. Jeremiah S. Grafstein: Honourable senators, Canada’s International Policy Statement provokes a pause for holistic reflection. Is it a truism that Canada is a trading nation? True, almost 50 per cent of our jobs depend on trade. We are in the business of trade and yet to call ourselves a trading nation, when almost 90 per cent of our trade is with the United States, is a malapropism. This trade imbalance is both disturbing and ultimately dysfunctional. Any business would be foolhardy to depend on one customer — so too for trading nations.

The International Policy Statement offers a fresh start in thinking anew about how to fast track-trade diversification consonant with our foreign policy in pursuit of both democratic and economic development. There are new ways to collaborate abroad as the statement suggests, via research and investment.

• (1410)

Trade, we agree, follows investment. Fast-tracking trade diversification will bring faster results in terms of producing growth at home while reducing security threats abroad. Accelerating economic growth and democratic development abroad is North America’s safest safeguard against insecurity.

Here are four simple ideas on fast-tracking a revitalized and re-engineered free trade agenda: While we talk about Canada’s role in the Middle East, we do not mention a free trade agreement with willing Jordan, as we have so successfully undertaken with

Israel. Once the Palestinian Authority is ready, it, too, can join. Free trade enhances both democracy and economics. Consider the American model of free trade with Jordan, which requires both Jordanian and Israeli inputs as small steps toward economic cooperation and democratic integration. This model would work not just in Jordan but throughout the Middle East. Egypt is experimenting with this model with Israel as we speak. Others are also interested.

Turning to the eastern front, Canada has a special relationship with Ukraine. Without faster economic growth, the “Orange Revolution” will falter and insecurity arise. Could we not undertake a preparatory agreement with Ukraine leading to free trade? Canada has the benefit of Ukraine’s largest diaspora, which could take an active hand in developing these relationships.

You will recall, senators, that two weeks ago all senior deputy ministers from Georgia visited Ottawa to learn how our public service and departments operate in a free and democratic society. The “Rose Revolution” cannot succeed without economic growth. A preparatory free trade agreement that would include Georgia, Azerbaijan and Armenia would be a giant leap forward towards economic growth, harmonization and democratic development in this troubled region — across the Caucasus — and put Canada in play in a region where we are grossly under-represented.

Finally, the foreign policy statement has targeted Africa as a priority, as has our report in the Senate. Why should we not lead with a free trade agreement with South Africa, the most stable and greatest economic power in Africa? Here, too, we have a special relationship. We share complementary economics, resources, agriculture, manufacturing, education, science and similar political institutions. We benefit from a large and talented South African expatriate community which could help navigate such an agreement consistent with our policy, placing Africa at the top of our foreign policy agenda.

Honourable senators, without economic and democratic development marching hand in hand, we can neither advance growth at home nor stability abroad. Canada can move swiftly and cost-efficiently on all these fronts, enhancing our national interest while jump-starting these four regions of the world toward greater economic and democratic growth and stability. Principles and pragmatism march best when they march together.

TORONTO POLICE SERVICE

TRIBUTE TO CHILD EXPLOITATION UNIT

Hon. Consiglio Di Nino: Honourable senators, I rise today to pay tribute to the Toronto Police Service, and specifically the Child Exploitation Unit, for their determination and creative focus in saving a young American girl and nine Spanish infants from unspeakable abuse and exploitation. The young American girl was for years an anonymous victim of horrific sexual abuse, which was depicted on child pornography sites to fulfil the sick fantasies of the most twisted, perverted individuals. The Toronto police child porn unit was able to solve the case while protecting the identity of the young victim.

Honourable colleagues, the Toronto Police Service has developed one of the most sophisticated systems for tracking down national and international child pornographers. The dogged and dedicated work of the Toronto police officers last week led to the rescue of nine brutally abused Spanish infants, the youngest of which was 11 months old. These officers were able to identify where the images were taken from clues such as a computer keyboard and a subway ticket that appeared in the background. The clues were found in an 11-minute video featuring a two-year-old boy being tortured and raped. Spanish police have since arrested five men in this horrific case.

Too often, the extraordinary commitment and accomplishments of our police forces across Canada go unnoticed and unappreciated. Canadian police forces solve many cases every day, but these kinds of cases, the result of sick and perverted acts on the most vulnerable, must be the most difficult and yet the most satisfying to solve.

Det. Sgt. Paul Gillespie, head of the Toronto child porn unit, said of the Spanish case:

This is one of those times where all the pieces came together internationally, and luckily there have been some children rescued from horrific circumstances.

My message to Det. Sgt. Gillespie is this: You are too humble, sir. You and your colleagues, and indeed all police officers across Canada, deserve more credit, more praise and more thanks. I know I speak on behalf of all honourable senators in extending to you and your colleagues our congratulations and deep felt gratitude.

DISTINGUISHED VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I would like to draw your attention to the presence in our gallery of our former colleague the Honourable Derek Lewis. He is accompanied by his wife, Grace.

Welcome back.

[Translation]

ROUTINE PROCEEDINGS

COMMISSIONER OF OFFICIAL LANGUAGES

2004-05 ANNUAL REPORT TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table the 2004-05 Annual Report of the Commissioner of Official Languages, pursuant to section 66 of the Official Languages Act.

[Senator Di Nino]

[English]

SPIRIT DRINKS TRADE BILL

FIRST READING

Hon. Bill Rompkey (Deputy Leader of the Government) presented Bill S-38, respecting the implementation of international trade commitments by Canada regarding spirit drinks of foreign countries.

Bill read first time.

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

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

CANADA-UNITED STATES INTER-PARLIAMENTARY GROUP

CANADIAN/AMERICAN BORDER TRADE ALLIANCE CONFERENCE, APRIL 24-26, 2005—REPORT TABLED

Hon. Jeremiah S. Grafstein: 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-United States Inter-Parliamentary Group respecting its participation in the Canadian/American Border Trade Alliance Conference, "The Canadian/U.S. Border — A Unified Focus," Ottawa, Ontario, April 24-26, 2005.

[Translation]

TRANSPORT AND COMMUNICATIONS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF MEDIA INDUSTRIES

Hon. Joan Fraser: Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That, notwithstanding the Order of the Senate adopted on Tuesday, October 19, 2004, the date for the presentation of the final report of the Standing Senate Committee on Transport and Communications on its study into the current state of Canadian media industries; emerging trends and developments in these industries; the media's role, rights, and responsibilities in Canadian society; and current and appropriate future policies relating thereto, be extended from Friday, June 17, 2005 to Friday, December 23, 2005.

[English]

FOREIGN AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY INTERNATIONAL POLICY STATEMENT

Hon. Peter A. Stollery: Honourable senators, I give notice that at the next sitting of the Senate I shall move:

That the Standing Senate Committee on Foreign Affairs be authorized to examine and report on the documents Overview, Diplomacy, Development and Commerce of Canada's International Policy Statement, tabled in the Senate April 19, 2005; and

That the Committee report to the Senate no later than March 31, 2006.

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

Hon. Peter A. Stollery: Honourable senators, I give notice that at the next sitting of the Senate I shall move:

That the Standing Senate Committee on Foreign Affairs, in accordance with rule 95(3)(a) of the *Rules of the Senate*, be authorized to meet from July 12 to 14, 2005, inclusively, even though the Senate may be adjourned for more than a week.

• (1420)

PROGRESS REPORT ON QUALITY END-OF-LIFE CARE

NOTICE OF INQUIRY

Hon. Sharon Carstairs: Honourable senators, pursuant to rule 57(2), I give notice that, two days hence:

I shall call the attention of the Senate to *Still Not There: Quality End-Of-Life Care, A Progress Report*.

QUESTION PERIOD

JUSTICE

COMMISSION OF INQUIRY INTO THE SPONSORSHIP PROGRAM AND ADVERTISING ACTIVITIES—LEGAL PARAMETERS

Hon. Terry Stratton (Deputy Leader of the Opposition): Honourable senators, the Prime Minister has told Canadians that Justice Gomery will be able to tell who is responsible for the organized "adscam" scandal. We are continually told to wait for Justice Gomery to report before drawing any conclusions, yet paragraph k. of Justice Gomery's terms of reference states:

k. The Commissioner be directed to perform his duties without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization...

Given this limitation, beyond simply summarizing testimony already in the public domain, exactly what powers does Justice Gomery have to name names and to tell Canadians who is responsible for this sponsorship scandal?

Hon. Jack Austin (Leader of the Government): Honourable senators, I am delighted to assist by responding to this question. As Mr. Justice Gomery said on taking this appointment, he was satisfied he had all the powers that were necessary to carry out his inquiry and to identify what took place and who was responsible for what took place.

I should like to advise the chamber that Mr. Justice Gomery will be following the principles for an inquiry as set down in the tainted blood case that was reviewed by the Supreme Court of Canada. The Supreme Court laid down the principles that have been followed in both provincial and federal inquiries to the effect that this is not a criminal proceeding, where evidence is judged beyond a reasonable doubt; or a civil liability proceeding, where evidence is judged under the rules of evidence relating to the balance of probabilities. This is an inquiry that does not follow the rules of evidence but, rather, pursues issues that are found by the inquiry commissioner to be within his mandate. There is no constraint whatsoever with respect to the issue of identifying what took place and who was responsible for what took place.

Senator Stratton: Honourable senators, the leader is telling me that Justice Gomery has the right and will be able to name names as to where the responsibility lies in this inquiry. Is that, in essence, what the leader is saying?

Senator Austin: Honourable senators, I am saying that Mr. Justice Gomery is not restrained from drawing conclusions of fact and indicating who carried out what actions. He can deal with the question of responsibility for those actions. He cannot make findings of civil or criminal responsibility, but, short of that, he can certainly do anything he wishes to do.

Senator Stratton: Forgive me if I am putting words into the honourable leader's mouth, but I want to make sure I have this clear. In his report, Justice Gomery can actually name individuals and the acts that they carried out; is that what he is saying?

Senator Austin: Yes, he can make findings of fact that are, in his judgment, based on conclusions drawn from the evidence put before the commission, and he can identify the people who have carried out certain activities.

Senator Stratton: I really want to get to the question of what the Prime Minister has said in the past. On February 13, 2004, the Prime Minister told a press conference in Brockville, Ontario, that, "When I said there was going to be a public inquiry, it is a public inquiry that will have no limits."

Further, the Prime Minister was also quoted by the *National Post* this last March 12 as saying that, "We want all of the answers and we want them very, very much." The question then becomes: Is there a differentiation as to what the Prime Minister said then and the responses today? Are we talking around the

issue? From what one reads, Canadians are expecting that in the findings of the Gomery report they will be able to read the names named and the actions carried out so that they will have a clear understanding of what took place. The criminal proceedings are under way now and further criminal proceedings may or may not take place subsequent to the tabling of that report.

Senator Austin: Honourable senators, I think it is necessary to emphasize again that no inquiry created by any government is authorized to make findings of a criminal or a civil liability. We have court processes to ascertain liability and those processes have rules of evidence with respect to what is said and the documents that are prepared. These are longstanding practices, and I am sure that no honourable senator wants to interfere with them.

Honourable senators, an inquiry is authorized to receive evidence. The commissioner is entitled to pursue his mandate, in his own judgment, as to what is appropriate. The commissioner is entitled to draw conclusions from the facts, to state what he believes to be the facts, to say who carried out what actions, and to tell the Canadian public what took place. I believe that the statements referred to by Senator Stratton are being followed by the commission.

When Mr. Justice Gomery approved the terms of reference, he said that he was satisfied that he had the authority to do what I have just said he is permitted to do. I repeat: He will follow the principles for an inquiry as set out by the Supreme Court of Canada in the tainted blood case.

Honourable senators, we are aware that a resolution has been presented by the Conservative Party in the other place relating to the Gomery inquiry, and as far as I am concerned, it is redundant to Justice Gomery's mandate. There is a concern — and Senator Tkachuk says there should not be a problem — shared by all honourable senators that nothing be done to interfere with the course of the Gomery inquiry and that it be left untainted by political statements and political action. Mr. Justice Gomery must be allowed to come to his conclusions without the appearance of any attempt by a political individual or group to influence his work. The resolution in the House can be coloured as an attempt to interfere with his work, and I would hope that the other chamber will recognize that it does not add anything to the inquiry and may set up a political question with respect to it.

• (1430)

COMMISSION OF INQUIRY INTO THE SPONSORSHIP
PROGRAM AND ADVERTISING ACTIVITIES—
LAYING OF CHARGES FOR WRONGDOING

Hon. Gerry St. Germain: Honourable senators, my question is for the Leader of the Government in the Senate. What guarantee do Canadians have that those who broke the law will be brought to justice under the criminal process in this country? If the allegations are correct in regard to kickbacks to the Liberal Party of laundered and dirty money, then theoretically the Liberal Party has fraudulently won three elections — 1997, 2000 and 2004.

Can the minister tell us what guarantees there are that the people who participated in these criminal activities will be brought to justice?

[Senator Stratton]

Hon. Jack Austin (Leader of the Government): Honourable senators know that three persons have already been charged under the Criminal Code for actions taken that relate to events being investigated by Mr. Justice Gomery. There may well be others. That is in the hands of the RCMP and the Attorney General of the Province of Quebec. The guarantees are within the integrity of our legal system.

PRIVY COUNCIL OFFICE

COMMISSION OF INQUIRY INTO THE SPONSORSHIP
PROGRAM AND ADVERTISING ACTIVITIES—
STRATEGIC OFFICE FOR PREPARING
GOVERNMENT RESPONSES

Hon. Marjory LeBreton: Honourable senators, last week we learned that the Martin government is using over \$1 million of taxpayers' money to run a war room in the Privy Council Office to control the damage coming out of the Gomery inquiry and to prepare answers for ministers of the Crown, perhaps the ones that Senator Austin has in his book. Can the Leader of the Government explain why this function is being run out of the Privy Council Office and not out of the more political Prime Minister's Office?

Hon. Jack Austin (Leader of the Government): I would be delighted to respond to the question of Senator LeBreton. The office was set up to facilitate the Gomery inquiry. That commission was set up by the Crown and demands were made for documents from the federal government. That is the work of the Privy Council Office. They were given the instruction to provide every possible facilitation to the Gomery commission in relation to the provision of any documents that the Gomery commission requested. The office is not, as Senator LeBreton has said — I believe the phrase was —

Senator Tkachuk: A war room.

Senator Austin: Thank you, Senator Tkachuk — some kind of political activity or action. It is an office with a function that has to be performed by the Privy Council because the Privy Council has access to the documents.

Senator LeBreton: I am quoting from a newspaper article that was reporting on this subject matter. That article says quite clearly that the cost of the strategic office, which does everything from prepare answers for Question Period in the House of Commons to keeping the PMO abreast of the testimony at the inquiry, covers the salaries of staff and expenses. It clearly states in this access request that that strategic office is helping prepare answers to questions. That is a political matter, and the government leader can answer to that in a moment.

According to the government phone directory, five persons are formally assigned to this branch in the PCO known as Coordination Sponsorship Matters. Could the Leader of the Government confirm that this is the extent of the staffing in this so-called war room and that no other persons are assigned to this war room from other offices?

Senator Austin: Honourable senators, I do not think there is anyone who knows better than Senator LeBreton the function of the Privy Council Office. It is to advise the Prime Minister with respect to public policy issues. That is by no means to give

political advice to the Prime Minister but, rather, advice with respect to facts and advice with respect to the policies which the government has followed, or to assist in the evolution of public policy. I want to put on the record an absolute denial that this so-called war room has anything to do with political advice.

With respect to the personnel there, I will make inquiries and try to provide Senator LeBreton with an answer.

Senator LeBreton: The *Ottawa Citizen* of May 24 quoted a memo from February 18, 2004, when the government was setting up this “facility,” since the leader does not like to call it a war room. The memo said that Mr. Guy McKenzie was the proposed head of what was then being called the Intergovernmental Coordination Group. Yet, just five days earlier, the Auditor General had specifically identified Mr. McKenzie, the former executive director of Communications Canada, as one of the people whom the Public Accounts Committee of the other place wanted to call as a witness in their investigation of the sponsorship program.

Could the government leader advise the Senate as to why someone so closely connected to the sponsorship program would be considered to coordinate this war room, in spite of having been named by the Auditor General?

While I am on my feet, I have another question with regard to Mr. McKenzie. He is currently the Associate Deputy Head of Infrastructure Canada. His office is at 90 Sparks Street, in the same building as the sponsorship war room. Could the Leader of the Government advise the Senate as to whether Mr. McKenzie has ever played a role in the sponsorship war room, either directly or indirectly, and, if so, is this role ongoing?

Senator Austin: Honourable senators, as to the question dealing with the facts with respect to Mr. McKenzie, I will be happy to pursue the information. I am sure Senator LeBreton is not implying that, by being mentioned, someone has done something that requires investigation or raises any question of malfeasance.

Senator LeBreton: I did not suggest that. That is more in the mind of the person making the statement than in mine, I can assure honourable senators. I was simply inquiring as to why Mr. McKenzie, who was mentioned as a potential witness to appear before the Public Accounts Committee and apparently knows something of the sponsorship scandal, would then be considered for or put in a position where he would be answering for it, when he may have information that would be in conflict with what he is now being asked by the government to do.

Senator Austin: The implied premise of the question, Senator LeBreton, is that he may be in a conflict of interest position. The honourable senator says that she is not alleging that, but she is very curious, notwithstanding, to know whatever is needed to be known. Of course, whatever is needed to be known I will be happy to provide.

Senator LeBreton: Thank you.

FINANCE

LEGISLATIVE AND REGULATORY FRAMEWORK FOR FEDERALLY REGULATED PENSION PLANS— FUND TO GUARANTEE PENSIONS

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate and relates to the fact that more than half of all defined-benefit pension plans regulated by the federal government face some kind of funding shortfall.

Last week, the Minister of Finance released a consultation paper on ways to strengthen the legislative and regulatory framework for pension plans, entitled “Strengthening the Legislative and Regulatory Framework for Defined Benefit Pension Plans Registered under the Pensions Benefits Standards Act, 1985.” The problem and issues outlined in that discussion paper include management of fund deficits, obstacles to adequately funding pension plans, the settlement of disputes over surpluses, funding on plan termination and a pension guarantee fund.

These problems are not new, but have become more serious in recent years. Indeed, at least one of the issues raised in this consultation paper, that of full funding on plan termination, was the subject of consultations some four years ago.

Could the Leader of the Government in the Senate advise us whether the government has a specific time frame in mind for bringing forward legislation to strengthen the legal framework of federally regulated pensions?

Hon. Jack Austin (Leader of the Government): I thank Senator Oliver for raising this very important question, which affects the well-being of a considerable number of Canadians. As to the specific question on the time frame, I cannot provide any advice at this moment, but I will make inquiries.

Senator Oliver: As a supplementary question, part of the government’s original budget deal with the NDP was a \$100-million fund to guarantee pensions, and that somehow got cast aside and replaced with a proposal to protect salaries in the event of bankruptcy. The two, frankly, are quite different.

On page 13 of the consultation paper, the finance department takes two sentences to outline the advantages of a pension benefit guarantee fund, followed by seven sentences which take a more critical position on the idea. Will the government act on the proposal to create a fund to guarantee pensions?

Senator Austin: Honourable senators, I will advise when I have the information.

• (1440)

INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

COMMITMENTS RESULTING FROM CABINET/ABORIGINAL ASSOCIATIONS RETREAT— FUNDING OF PROPOSALS

Hon. Gerry St. Germain: Honourable senators, today the Prime Minister and cabinet members will participate in a policy retreat with First Nations leaders from across the country. Media reports

have stated that the Aboriginal groups are hoping that the meeting will lead to a deal worth billions of dollars for a variety of initiatives, including changes to the compensation process for survivors of residential school abuse. This is a very positive step on behalf of the government, if they do this.

My question for the Leader of the Government in the Senate is this: How will the federal government pay for the funding commitments it is expected to make to First Nations people this week, given that it has already surrendered its fiscal breathing room to the NDP to the tune of over \$4 billion?

Hon. Jack Austin (Leader of the Government): Honourable senators, I thank Senator St. Germain for his reference to the announcement on the appointment of Mr. Justice Frank Iacobucci, formerly a judge of the Supreme Court of Canada, to act as the government's representative to lead discussions with respect to issues relating to the responsibility of the Government of Canada and certain religious organizations regarding Indian residential schools. Both the Grand Chief Phil Fontaine, who leads the Assembly of First Nations, and the Deputy Prime Minister signed an agreement with respect to this process. Both sides believe that it will facilitate considerably the settlement of a grievous issue. The report is expected from Mr. Justice Iacobucci by March 31, 2006.

With respect to the retreat, it takes place this afternoon at 3:30 p.m. I believe a significant agreement will be signed with five Aboriginal groups representing the bulk of the Canadian Aboriginal community, in areas such as health, education and housing in the development of capacity and governance. The serious questions to which Senator St. Germain has in the past alluded regarding the social condition of the Aboriginal community can be addressed in partnership between the federal government and the Aboriginal associations.

With respect to the amount of funding and where it will come from, Senator St. Germain will probably be closer to an answer, as will I, in the budget that is expected in February 2006.

Senator St. Germain: Honourable senators, historically, huge promises have been made to our Aboriginal peoples by governments, and nothing has happened. After land settlement and various other agreements have been entered into, groups have come before the Aboriginal Peoples Committee, indicating that the implementation factor is the outstanding feature that never takes place as far as the Aboriginal peoples are concerned.

It is easy to stand up and make huge promises. There are specific Aboriginal land claims worth hundreds of millions of dollars on lands that are being held by the Crown. Why are these land claims not being settled? It appears on the surface, and hopefully I am wrong, that the government is trying to buy votes for the upcoming election. Other than that, why is the government not settling these matters in a chronological and systematic order? The Aboriginal people have been screaming at us in regard to implementation of specific land claims and various other scenarios that affect them. Suddenly, it has become a priority. The government has spent over \$4 billion to gain the support of the NDP and millions of dollars in various sectors of the country. Can the Leader of the Government in the Senate explain where

this money is coming from? Canadians have a right to know. As much as the government may think it is their money, it belongs to Canadians.

Senator Austin: On the final statement of Senator St. Germain, I could not agree more. The money government spends is the money the people of Canada provide to it for public programs.

Senator Tkachuk: It is taken by the force of law at gunpoint.

Senator Austin: Let Honourable Senator Tkachuk have more respect for Parliament, and the democratic process which is Parliament. I do not have to talk to the honourable senators in this chamber, even Senator Tkachuk, about democratic elections, the people's representatives, the right to make decisions on behalf of the people and their accountability to the people.

Some Hon. Senators: Oh, oh.

Senator Austin: Will Senator St. Germain's colleagues allow me to address the question?

Senator St. Germain: Seeing as I have been elected, I know what accountability is. That is a big difference.

Senator Austin: The honourable senator was defeated, I take it.

Senator St. Germain: I was, but I had the courage to run.

Senator Austin: So had I. The people, in their wisdom, did not choose me to be a member of Parliament.

Honourable senators, this is an important subject. The whole agenda between the people of Canada and the Aboriginal community is an enormous one. Senator St. Germain refers to treaty settlements. Those settlements involve provinces, which have the land base, and they involve third parties that have acquired vested rights on the land base. Therefore, the process of dealing equitably with Aboriginal communities is one that requires considerable negotiation, patience and capacity building on all parts. That process continues.

Senator St. Germain's first question related to the question of capacity building and social amelioration in the Aboriginal community. The process that will be undertaken this afternoon in a meeting between the federal cabinet, led by the Prime Minister, and the representatives of five organizations representing most of the Aboriginal community, is one that relates to the improvement of social conditions. The process also relates to the improvement of the capacity of Aboriginal communities to create viable economic businesses, to manage their affairs in a transparent and accountable fashion, and to be accountable to their own people in the way they want to be accountable.

PRIVY COUNCIL

INDIAN RESIDENTIAL SCHOOLS RESOLUTION— FUNDING OF SETTLEMENTS

Hon. David Tkachuk: Honourable senators, from what I have read today, the \$4.5 billion dollars that was agreed to between Mr. Fontaine and the Prime Minister, the Government of Canada and the Assembly of First Nations, was considered a starting

point. Could the Leader of the Government tell us whether there has been any assessment by the federal government as to how much money in total it would take to settle the residential school question?

Hon. Jack Austin (Leader of the Government): If Senator Tkachuk reads carefully, he will discover that there was no sum undertaken or committed by the federal government. These are estimates by various people of what it might cost. There is no agreement that provides specific funds to be transferred to the Aboriginal communities at this stage.

What is planned today are agreements in principle on the shared direction for the development of programs with the Aboriginal community, and then a major first ministers' conference in the fall with the Aboriginal leadership to deal with that issue of both funding and the role of the provinces in the supply and support of services.

Senator Tkachuk: If no money is to be directed to the 4,000 First Nations people who have said they have been abused by the residential school system, where did the \$4.5 billion come from? Why is it being used if no money is being distributed?

Senator Austin: I know the honourable senator does not want to misunderstand. With respect to the Indian school settlement question, the government representative, Mr. Iacobucci, will be making recommendations as to the quantum. The government has agreed in principle to provide compensation, but there is no number set out. It will be for Mr. Iacobucci to make a recommendation after negotiations with all the parties as to the quantum.

• (1450)

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I have the honour to present two delayed answers to oral questions raised in the Senate. The first is to a question raised on May 11, 2005, by Senator Keon, regarding private and public delivery of services.

[Translation]

The second is to a question raised on May 11, 2005, by Senator Comeau, regarding the Nunavut Report on Development of the Arctic Fisheries Industry.

HEALTH

PRIVATE AND PUBLIC DELIVERY OF SERVICES

(Response to question raised by Hon. Wilbert J. Keon on May 11, 2005)

The Honourable Senator Keon had inquired whether the federal government wants to get into the business of buying out private diagnostic clinics.

Provinces and territories must comply with the *Canada Health Act* criteria and conditions in order to receive the full amount of the Canada Health Transfer cash contribution. Under the *Canada Health Act*, all medically necessary

insured health services must be covered by provincial/territorial health insurance plans. The *Canada Health Act* applies to insured health services whether they are delivered in public or private hospital facilities.

That being said, provinces and territories have the primary responsibility for the organization of health care. Provincial and territorial governments have jurisdiction over the administration and delivery of health care services and health human resources. Hence, buying out clinics is not within the jurisdiction of the federal government. While this government's preference is to strengthen the publicly-funded health care system, as the Honourable Senator Austin correctly stated on May 11, 2005, the *Canada Health Act* does not preclude provinces from entering into arrangements with the private sector, as long as insured residents are not charged for insured services.

Canada's approach to resolving possible Canada Health Act compliance issues emphasizes transparency, consultation and dialogue with provincial and territorial health ministry officials. In most instances, issues are successfully resolved through consultation with provinces and territories based on a thorough examination of the facts. To date, most disputes and issues related to the administration and interpretation of the *Canada Health Act* have been addressed and resolved without resorting to deductions.

Health Canada will continue to work with all provinces and territories to ensure that they operate in full compliance with the requirements of the *Canada Health Act*.

FISHERIES AND OCEANS

NUNAVUT—REPORT ON DEVELOPMENT OF ARCTIC FISHERIES INDUSTRY

(Response to question raised by Hon. Gerald J. Comeau on May 11, 2005)

The Government of Canada is committed to helping build strong northern economies.

The government demonstrated its readiness to begin action on the most pressing needs by announcing in the March 2004 budget \$90 million over five years in support of northern economic development, commencing in 2004-05. In conjunction with the territorial governments, the Government of Canada is developing strategic investment plans and subsequent economic development activities in the north. These investments will be made across four broad thematic areas: building the knowledge base; enhancing the economic infrastructure base; capacity development; and, economic diversification. Under this initiative, development of a sustainable and viable fishery and harbour development in Nunavut have been identified as priorities.

In addition to this major investment, the Government of Canada is working in collaboration with territorial governments in the development of a Northern Strategy. A first key milestone was December 14, 2004, when the Prime Minister and territorial leaders jointly announced a

framework for a Canadian Northern Strategy. The Northern Strategy offers a multidimensional policy framework that will address a number of strategic goals, including the establishment of strong foundations for economic development, building healthy and safe communities and developing northern science and research.

The Northern Strategy was reaffirmed in the 2005 budget through a commitment of \$120 million, which will be divided equally among the three territories, in order to provide the territorial governments with additional capacity over three years to help achieve the objectives of the Northern Strategy in the short term. The strategy, which will be announced later this spring, will provide a solid foundation for collaboration in achieving joint federal and territorial objectives in the north, including those related to research, infrastructure and training.

The development of the Northern Strategy is being led by the Department of Indian and Northern Affairs (INAC), and the Department of Fisheries and Oceans (DFO) is working with INAC and other federal departments in this important initiative. The department continues to advocate actions under the strategy that will lead to the development of sustainable and viable fisheries in the north.

On April 27, 2005, Geoff Regan, Minister of Fisheries and Oceans, officially launched a three-year, \$5.1 million fisheries training fund for Nunavut. The program, which started up in February, can accommodate 50 to 60 trainees and is to support capacity building of Inuit from low-level deckhand and factory jobs into better-paying technical and professional jobs: mates, engineers, fisheries observers, and administrators.

The main contribution of DFO's effort in support of the Arctic fisheries industry is to provide increased Nunavut access to the marine fisheries in its adjacent waters. For example, since 1999, Nunavut's share of the increases in northern shrimp allocation in adjacent waters has more than doubled; and Nunavut's overall allocation of Greenland Halibut has similarly doubled.

In addition, several research projects have been ongoing to assist the development of fisheries in the Nunavut Territory in recent years. Among these projects:

1. Cumberland Sound Greenland Halibut Monitoring 1997-2005: The results of this program were used to establish a quota for Cumberland Sound turbot that is separate from the one in Division 0B.
2. Greenland Halibut Stock Assessment in NAFO Division 0A and 0B. Extensive surveys were conducted in Baffin Bay and Davis Strait area in 1999-2004. These were invaluable in the establishment of total allowable catch in NAFO Division 0A and 0B.
3. Arctic Char Assessment in Cumberland Sound, Cambridge Bay and in various other areas to support the management of this species for commercial and sustainable uses.

4. DFO, in collaboration with the Northern Shrimp Research Foundation, will conduct a shrimp survey in NAFO Division 0B and 2G in 2005. The NSRF plans to continue the survey in subsequent years (2006-09).

The department is aware of the difficult conditions fishers currently operate in and of the contribution which the fishing industry could make to the Nunavut economy and as such has been working closely with the Nunavut government to determine possible harbour requirements which could best serve the territory. In early 2004 a joint Department of Fisheries and Oceans/Department of Economic Development and Transportation harbour committee was established to undertake a comprehensive investigation of the needs, costs, and benefits of constructing up to seven harbours in the territory (sites which were deemed to offer the greatest benefits and support to the fishing industry) and to propose alternative implementation and funding options.

Each of the seven communities was consulted, technical requirements were assessed, and cost effective harbour proposals were designed. A final report is expected to be presented shortly to both the Deputy Minister, Department of Economic Development and Transportation, Government of Nunavut and the Deputy Minister of Fisheries and Oceans, Government of Canada, for their and their ministers' consideration.

[English]

ORDERS OF THE DAY

AERONAUTICS ACT

BILL TO AMEND—SECOND READING— POINT OF ORDER—SPEAKER'S RULING RESERVED

On the Order:

Resuming debate on the motion of the Honourable Senator Munson, seconded by the Honourable Senator Mercer, for the second reading of Bill S-33, to amend the Aeronautics Act and to make consequential amendments to other Acts.

Hon. David Tkachuk: Honourable senators, I wish to raise a point of order. The question is as to whether Bill S-33, to amend the Aeronautics Act and to make consequential amendments to other acts, has provisions within it that attract the provisions of rule 81, and sections 53 and 54 of the Constitution Act.

Rule 81 of the *Rules of the Senate of Canada* reads as follows:

The Senate shall not proceed upon a bill appropriating public money that has not within the knowledge of the Senate been recommended by the Queen's representative.

The relevant portion of section 54 of the Constitution Act states:

It shall not be lawful for the House of Commons to adopt or pass any...Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any Purpose that has not been first recommended to that House by Message of the Governor General...

Section 53 of the Constitution Act is in part reflected in the provisions of rule 81, requiring that money bills originate in the other place. For greater certainty, section 53 reads:

Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

In short, I believe that Bill S-33 is a money bill.

The specific provisions of Bill S-33 that concern me are contained in clause 17, notably proposed section 5.82(2), which reads:

The Minister shall pay for the cutting and removal of the natural growth that is affected by the agreement, shall compensate the owner or lessee for any reduction in the value of their interest or right in the lands that results from the cutting and, if the owner of the natural growth is not the same as the owner of the lands, shall compensate the owner of the natural growth for any reduction in the value of their interest or right in the natural growth that results from the cutting.

I would add that proposed subsection 5.85 has similar wording and the same intent.

The fact that these subsections started with the words, "The minister shall pay," aroused my curiosity. We do not often see such provisions in Senate bills. While each of them are followed immediately by subsections that enable the Crown to recover the monies paid out by the minister from the airport operator, the issue is whether or not the initial payment constitutes a new appropriation from the Consolidated Revenue Fund. It remains an open question as to what might happen should the airport authority refuse to repay the money, or be unable to pay.

It is true that the amounts involved are likely, but not certain, to be small. That does not, however, fully resolve the question that I raise today. The question is one of principle, not of dollar value.

Beauchesne's 6th edition, citation 611, page 185, states:

A bill from the Senate, certain clauses of which would necessitate some public expenditure, is in order if it is provided by a clause of the said bill that no such expenditure shall be made unless previously sanctioned by Parliament.

The condition subsequent has not been met, and it is thus necessary to determine if the clauses in question do necessitate some public expenditure.

It might be argued that the situation here with regard to the two subsections mentioned bears some similarity to that which arose in the Thirty-fifth Parliament during consideration of Bill S-12, providing for self-government by the First Nations of Canada. You will recall, honourable senators, that Speaker Molgat's ruling on February 4, 1997, said:

Moreover, while Senator Stanbury indicated that clauses 16 to 27 might possibly involve an expenditure by government, it is not certain whether these anticipated operations would be funded by a new appropriation, which would require a Royal Recommendation, or by existing allocations established through previous legislation. Nor is there any language in the bill that effectively imposes any perceived appropriation. Yet these are the conditions to be satisfied when considering whether a Royal Recommendation should be attached to the bill.

I believe the bill under current consideration can be distinguished because the two subsections have mandatory language compelling the minister to make the disbursements. The difficulty I had in considering the operation of the two provisions in the bill at hand relates to the continued lack of clarity as to the circumstances that require a Royal Recommendation. I suspect that this lack of clarity has left government drafters a little uncertain on occasion, and perhaps has even resulted in the attachment of a Royal Recommendation to some bills originating in the other place simply to avoid having to answer the question.

Although similarly not applicable to the situation at hand today, involving as it does the introduction at first instance of a bill in the Senate, the situation has also been confused somewhat by the fact that governments in more recent times — and by that I mean since the mid-1970s — have failed to specify which clauses of bills attract a Royal Recommendation and have also failed to provide any detail as to the amounts that might be required. While the flexibility that this vagueness engenders is no doubt helpful to the government, it has muddied the waters from a procedural standpoint.

Turning back to the matter at hand, because this is a bill originating in the Senate, it cannot and does not have a Royal Recommendation. For this reason, we need to resolve the question of whether it does, in fact, require a Royal Recommendation by seeking an early ruling on Bill S-33 as to which side of the dividing line — or perhaps I should classify it as a murky dividing band — it falls.

In reviewing this matter, the Speaker may, at the end of the day, find it helpful to refer to paragraph 599(1) of Beauchesne's 6th edition, page 184:

If any motion, whether in the House or in a committee, requires, but fails to receive, the recommendation of the Crown, it is the duty of the Speaker to announce that no question can be proposed upon that motion, or declare the bill out of order, or to say that the problem may be rectified by the proposer obtaining a Royal Recommendation.

In our case, we all know the latter course of action is not possible.

Hon. Jack Austin (Leader of the Government): Honourable senators, first, I have no notice of the point of order, and therefore I am not well prepared to argue it. However, I doubt very much that it is a point of order. I believe it is an argument that can be levelled in the debate on the legislation to ask whether it should proceed in this chamber. I would be surprised if His Honour would find it as a point of order.

I do not know whether it is appropriate, but I would appreciate one sitting day to consider the arguments of Senator Tkachuk before replying to them. Otherwise, it simply provides a parliamentary advantage because this side is not prepared to reply in detail.

Senator Lynch-Staunton: Too bad.

Senator Cools: He has raised a question that has to be dealt with.

The Hon. the Speaker: I will recognise Senator Stratton next and then I will go to Senator Cools.

Hon. Terry Stratton (Deputy Leader of the Opposition): Honourable senators, I wish to add a few comments regarding Bill S-33 and whether or not it falls outside of the requirement for a Royal Recommendation.

First, Senator Tkachuk has raised an interesting point with regard to the compulsory nature of the provision requiring the minister to make an expenditure. It is rare to see the word "shall" in this context. Even budget bills do not go so far, as they are always careful to couch the spending provisions permissively.

For example, a brief perusal of Bill C-48, informatively entitled "An Act to authorize the Minister of Finance to make certain payments," now before the other place, reveals that the Minister of Finance "may" make payments out of the Consolidated Revenue Fund, the restriction coming in the form of a limitation, a ceiling, if you can call it that, of \$4.5 billion.

It is curious that this bill does not simply authorize the operator of the airport to conduct the necessary studies and pay directly for any essential cutting and removal rather than working through the artifice of the minister responsible. That would obviate the problem now raised.

• (1500)

Beauchesne's 6th edition clarifies the role that the three branches of Parliament play. Paragraph 595, at page 183, states, in part, the following:

The Crown, therefore, demands money, the Commons grants it and the Senate assents to the grant.

It would appear that in this case the Senate is being asked to grant the money, with it being left to the other place to assent to the grant.

However it came about, we have before us a bill which purports to compel the minister to make payments out of the Consolidated Revenue Fund, whether directly or indirectly, and which comes without a Royal Recommendation.

There is a second problem with this bill, namely, that there are other provisions which raise questions in my mind about whether it might be properly classified as a money bill. Frankly, I was surprised to see the government taking the view, one that I am generally pleased to support, that the Senate can initiate legislation which involves significant new duties being imposed upon a minister and a department.

I would draw the attention of honourable senators to clause 41 of the bill, which is almost 20 pages in length and which replicates large portions of the Canadian Transportation Accident Investigation and Safety Board Act. This clause creates a new body, the Airworthiness Investigative Authority, and assigns it the responsibility for investigating incidents involving civilians and military aircraft or facilities.

As I indicated, it is a bold move on the part of the government to introduce legislation in the Senate that appears to run contrary to the February 27, 1991 ruling of Speaker Charbonneau, when he said:

The Chair is of the opinion that clauses 8(2) and 8(3) clearly impose new statutory duties on the Minister of Indian and Northern Affairs, and hence on the department. They therefore infringe upon the financial initiative of the Crown and are not in order. Bill S-18, as long as it contains these contravening clauses, should not be proceeded with and should be removed from the order paper.

In arriving at that decision, Speaker Charbonneau reviewed the recommendation of the Standing Senate Committee on National Finance in its report of February 1990 as well as citing Erskine May, twenty-first edition. I will draw the attention of honourable senators to Erskine May, twenty-second edition, at page 767, under the heading "Increase of expenditure by extension of purposes, etc."

When a bill contains a provision extending the purposes of expenditure already authorized by statute (for example, by adding to the functions of an existing Government agency or publicly funded body, extending the classes of persons entitled to a statutory grant or allowance, or extending the range of circumstances in which such grants or allowances are payable), that provision will normally require authorization by Money resolution. In determining this question, regard is taken only of the particular provision in the bill.

Beauchesne's 6th edition, paragraph 596, page 183, deals with the Royal Recommendation and states, in part:

...an amendment infringes the financial initiative of the Crown not only if it increases the amount but also if it extends the objects and purposes...

In this context, it is important to note that Bill S-33 is in reality an amendment to the Aeronautics Act.

On its face, Bill S-33 provides a significant extension of the objects and purposes of the minister and the Department of National Defence. The creation of a new military body with these broad investigatory powers, including compelling civilians involved in accidents to submit to medical exams and physicians to provide information about a patient, seems to go well beyond what is currently permissible in the military.

This is interesting material for debate, but for the purposes of immediate discussion, the fact that the minister and the department are being vested with new powers is critical to a determination of whether a Royal Recommendation is required. In this context, I wish to quote from a May 17, 2005 news release issued by the Minister of Transport at the time of the introduction of this bill:

A new part is being proposed in the act to provide the Canadian Forces Airworthiness Investigative Authority with new powers and duties to carry out flight safety investigations that may involve civilians in military aviation accidents or incidents. These new powers and duties would be comparable to those exercised by Transportation Safety Board investigators examining civilian accidents.

The news release goes on to quote the Minister of National Defence as saying:

The new powers will permit them to conduct more comprehensive investigations in order to ensure the safety of military personnel and civilians involved in military aviation.

There is little doubt that Bill S-33 does endow the military with new powers, new authorities, new purposes and new functions. Unfortunately, those are things that incur new costs and consequently require a Royal Recommendation. As I said at the outset, I am hopeful that we will be able to negotiate this path successfully and provide the Senate with greater latitude for the future introduction of bills with much greater scope than has previously been the case.

Honourable senators, my fear is that the government is trundling down a well-marked path, heading in a direction where many have gone before, only to find that the minor stumbling block of the missing Royal Recommendation is in fact an insurmountable mountain.

The Hon. the Speaker: Honourable senators, I said that I would see Senator Cools next, but I normally would alternate. With your understanding, I will go to the government side and then the opposition side.

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, obviously the government did not think this was a money bill. Otherwise, the government would not have introduced it in the Senate. That is the position of the government. I think there is adequate precedent for His Honour to rule on this matter, and we would be quite happy to abide by a ruling on the matter.

Hon. Anne C. Cools: Honourable senators, I am having considerable difficulty here because the debate began with Senator Tkachuk raising a point of order, and then the Leader of the Government in the Senate asked for, I believe, a day to be able to respond to the point of order. I would like the house to settle that question first. If Senator Austin is granted that request, and I do not know who would be the person or the persons to grant it, then I would certainly want to delay my remarks until then, when he speaks. As far as I understand, points of order are supposed to be done relatively spontaneously and are supposed to be handled, resolved and adjudicated immediately. I would like that question dealt with before I add anything else to the debate.

The Hon. the Speaker: Honourable senators, a question has been put to me. I do point out that debate is not in order in dealing with questions of privilege or questions of order. It is an opportunity to raise whether we are proceeding in accordance with our rules or those that we incorporate by reference, which have been referred to in this point of order already, usually contained in texts such as Beauchesne's and Erskine May.

I did hear Senator Austin's comment, and I will determine at the end of the interventions on the point of order how I will respond to him. At this time, I would advise honourable senators that if they have anything to say on this matter, it would be prudent to do so now.

Senator Cools: Honourable senators, I find this manner of proceeding quite irregular and extraordinary. What His Honour is asking senators to do is to speak now and allow the government to have the last word at a later date. I find that extremely irregular and improper. My understanding is that it is not the decision of the Speaker as to whether or not any senator or the Leader of the Government can essentially adjourn the debate on a point of order. Senator Austin is proposing that he be allowed to adjourn the debate to another day. I would submit that if Senator Austin can adjourn the debate to another day, so can I and so can every other senator. If it is the pleasure of this house to grant such an adjournment, and should it be granted, then everyone else may be allowed to speak on another day.

• (1510)

I do not quite understand the admonition of the Honourable Speaker, who has said that those who wish to speak should speak now and that we will hear later today, perhaps, whether Senator Austin will be allowed to speak at a later date. Therefore, we must speak now, but Senator Austin might be allowed to speak later. I find that to be repugnant. What just went on is so improper as to insult and be disrespectful to every honourable senator left sitting in the chamber.

The Hon. the Speaker: Honourable senators, sharp and taxing language is not something that —

Senator Cools: The Speaker is out of order. The Speaker cannot cut someone off just like that.

Senator Robichaud: Order!

Senator Cools: The Speaker is out of order.

Senator Rompkey: The Speaker is standing.

The Hon. the Speaker: Honourable senators, may I have order, please?

Senator Cools: I am not out of order; you are, Your Honour.

The Hon. the Speaker: Order, please.

Hon. Senators: Shame, shame!

Senator Cools: You government senators should bury your heads in shame for what you have done to the system.

The Hon. the Speaker: May I have order, please? I am drawing to your attention the provision of our rules that it is not appropriate to use sharp or taxing language in any matter, whether discussing a question of order or in any matter of debate. I raise that provision because it seems to me that if we are not entering into that area, we are certainly bordering on it.

Senator Cools: I would like to say, honourable senators, that I have not used any sharp or taxing language. I would also like to add it is neither habit nor practice of mine to use such language. Go find it. You cannot find it. The term “repugnant” is extremely parliamentary, my dear Senator Smith, and very much in order.

Honourable senators, the issue before us is whether Bill S-33 has received a Royal Recommendation and whether the absence of such a Royal Recommendation is a bar to it proceeding in this chamber. This question has been put into the *Rules of the Senate*. Things just appear in the *Rules of the Senate*. God knows how they get there, but they just appear. Some of them are indeed very strange and questionable.

Rule 81 states clearly:

The Senate shall not proceed upon a bill appropriating public money that has not within the knowledge of the Senate been recommended by the Queen’s representative.

We would assume that “the knowledge of the Senate” would mean that it is not recorded on the bill in the usual place and that the bill has been royally recommended.

Honourable senators, I would submit that Senator Tkachuk’s point of order is valid and deserving of support. His point of order is a true point of order and speaks to very vital constitutional concerns that should preoccupy our minds.

It also speaks in a special way to the constitution of the Senate of Canada. We must remember that when the Senate of Canada was constituted by the British North America Act of 1867, it was given wider and larger powers than the House of Lords in respect to “financial legislation.” It was the intention of the BNA Act to give those wider powers, particularly in consideration of the federal nature of Canada and because Canada was a confederacy and not a unitary state.

I would like the record to show very clearly that the term “money bill” is not really helpful in the Constitution of Canada. The term “money bill” is reserved to U.K. practice and also was

created by the Parliament Act of 1911. Quite often we confuse ourselves and confuse others when we use these terms loosely, because it can be argued that every single bill has something to do with money.

The fact of the matter is that, in creating the Senate and the House of Commons, the BNA Act speaks directly to the matter that Senator Tkachuk has raised. Sections 53 and 54 are the two relevant sections. Section 53 states:

Bills for appropriating any Part of the Public Revenue or for imposing any Tax or Impost shall originate in the House of Commons.

Section 53 of the BNA Act is beyond question. It is incontrovertible and very clear. It is crystal clear that Bill S-33 does not originate in the House of Commons.

Section 54 of the BNA Act speaks to the question of a Royal Recommendation and states:

It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any Purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed.

Honourable senators, these two sections of the BNA Act are extremely important because they were thought to resolve the conflicts, constitutional differences and problems that the House of Commons and the House of Lords had encountered in the U.K. These two sections were intended to settle a lot of that constitutional unrest, for lack of a better word.

Therefore, we come to the central fact that, as Senator Tkachuk and Senator Stratton have articulated, Bill S-33 is fairly clear in the commands and the authorities that it gives to ministers to spend money. It authorizes appropriations and allows the minister of that particular department to make withdrawals on the Consolidated Revenue Fund. It is my opinion that this bill requires a Royal Recommendation.

I would like to close on the phenomenon of the Royal Recommendation. Quite often these words are thrown around and so often they are greatly misunderstood.

• (1520)

We must remember the great settlement of the English revolution, or the constitutional settlement, so to speak. The upshot of that period of unrest was that the king, the sovereign, was not to engage in expenditure of taxpayers’ dollars without the consent of the lower house of Parliament, the Commons. To that extent, we have moved ahead. We have enshrined the financial initiatives of the Crown within the BNA Act. Such initiatives should be moved by ministers, and always in the House of Commons. These are now called the financial initiatives of the Crown, and in addition we have the whole phenomenon of representation and taxation.

Senator Tkachuk has raised a valid point of order. It is a very meaningful point of order, and it deserves serious and proper consideration. This is a matter, honourable senators, that has bedevilled this chamber for quite some time, and we have had many honourable senators in the past study these matters. Some were themselves great authorities. Quite often we refer to reference books as the authorities, but the parliamentary authorities have always been those individuals in the Houses of Parliament who have studied the precedents and know the issues. At best, Beauchesne's and Erskine May are reference books. Sir Robert Maxwell Hyslop in England made a large issue of that in the U.K. House of Commons.

It is clear to me that this bill should have begun in the other place and should be accompanied by a Royal Recommendation. We can look to some studies of the Senate National Finance Committee on this matter. I sat as a member of that committee during the years of the leadership of Senator Stewart, when we studied these particular questions.

In closing, we cannot raise a point of order on a point of order, but I would like the Senate chamber to address the question as to what the conditions are under which debate may be postponed on points of order. If it can be postponed, for one, and if there is a rationale and a reason, we all want to know.

The Hon. the Speaker: We will deal with these matters. I think I have your point, Senator Cools.

I will go to Senator Tkachuk, as it is his point of order. Does any other honourable senators wish to comment? If not, do you wish to comment, Senator Tkachuk?

Senator Tkachuk: Honourable senators, I would like a minute first. I was not about to close, but I noticed something else after I spoke where I quoted proposed section 5.82. The subsection that I quoted begins: "The Minister shall pay," that is, to clear the brush around the airport, so the minister has to disburse money. Then there is a proposed subsection concerning the operator of the airport. This is proposed section 5.82(3).

The operator of the airport shall reimburse the Minister for every expense that the Minister incurs under subsection (2).

That means that the operator of the airport would be returning the money to the Receiver General and the Consolidated Revenue Fund. If the operator of the airport is paying back the money, obviously the money would have to be spent by the minister in the first place.

The Hon. the Speaker: I thank honourable senators for their input on Senator Tkachuk's point of order. It is a matter we have addressed on previous occasions, and of course there were references to previous rulings as well as to the authorities. I will take the matter under advisement and bring back a ruling as quickly as I can.

The matter of disposition or input on a point of order has been raised by Senator Austin's question, and Senator Cools has also raised it in her comments. I do repeat that debate is not in order in terms of dealing with a point of order or a point of privilege. Our operative rule is rule 18(3) which states:

When the Speaker has been asked to decide any question of privilege or point of order he or she shall determine when sufficient argument has been adduced to decide the matter, whereupon the Speaker shall so indicate to the Senate, and continue with the item of business which had been interrupted or proceed to the next item of business, as the case may be.

In this case, I advise that I have heard enough. There were a number of authorities quoted, and I do appreciate Senator Austin's comment, but I have heard enough to proceed with a determination of whether or not there is a point of order, and I will bring back a ruling as quickly as I can.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, I am rising because the Order Paper, as distributed contains an error. The error is the reference to the eleventh and twelfth reports of the Standing Senate Committee on National Finance having been combined and shown under Other Business. They should be shown under Reports of Committees.

Therefore, I will ask the table to now call the two reports by the National Finance Committee, tabled in the Senate on May 19, 2005, which deal with the Main Estimates 2005-06. As I said, these reports were inadvertently placed on the Order Paper under Other Business.

Hon. John Lynch-Staunton: Could I have clarification? I understood you to say that it should go under one rubric, and I think it is already under that rubric, Reports of Committees.

The Hon. the Speaker: I will have to ask Senator Lynch-Staunton for a copy. I only have the Speaker's scroll.

Senator Lynch-Staunton: It is under Reports of Committees right now.

The Hon. the Speaker: We have just completed Bills under Government Business, and we are now at Reports of Committees under Government Business. You will see on the published Order Paper, which has been distributed to all honourable senators, that we show this item on page 5 running on to page 6, under Reports of Committees, under the heading of Other Business. These should be Reports of Committees under Government Business. They were incorrectly put under Other Business on the Order Paper. That took them out of the category of Government Business, and so I am rising at the request of the table to make a correction and to indicate that they were erroneously included under Other Business on pages 5 and 6 of the Order Paper.

• (1530)

Hon. Anne C. Cools: His Honour has told the chamber, at the request of the table, that there is a mistake in today's Order Paper and that consideration of the report of the Standing Senate Committee on National Finance should have been listed under Government Business. However, I am afraid there is an additional mistake. If it was the intention that the item be listed under Government Business, the report would not have been tabled. Perhaps we could see what the chairman said at the time to learn what his intention was.

Under Reports of Committees it says:

Consideration of the eleventh report (second interim) of the Standing Senate Committee on National Finance (2005-2006 *Main Estimates—Foundations*), tabled in the Senate on May 19, 2005.—(*Honourable Senator Oliver*)

If Senator Oliver had in fact tabled that report, it would not have shown up under Government Business. As a matter of fact, it would not have come forward for consideration at all.

His Honour is trying to be helpful, but he may be adding to the confusion.

Perhaps I should raise this as a point of order. There is something unusual happening here.

If an error has been made, the Leader of the Government can rise in his place and ask for the agreement of the house to make a correction to the record or to the Order Paper rather than having His Honour rise to do it on his own initiative.

Perhaps Senator Rompkey can clarify this. When the report was brought to the chamber, was it presented or tabled?

Hon. Bill Rompkey (Deputy Leader of the Government): My understanding, on advice from the table, is that these orders should have been placed under Government Business but were erroneously placed under Reports of Committees. These reports deal with government business as they are on the Main Estimates. Therefore, we should deal with them under Government Business.

However, Senator Cools makes a good suggestion. If it would be helpful, I would ask leave that these two reports be included under Government Business and that we debate them as such.

Senator Tkachuk: Is Senator Rompkey asking for leave?

The Hon. the Speaker: Do honourable senators wish to proceed by leave or do they wish to proceed as we have been?

Senator Cools: I have made a suggestion. Someone has made a mistake, be it the table, Senator Oliver, the printers or the reporting staff. I have said, and Senator Rompkey seems to like the idea, that it is far better for the leaders of the government in the Senate to address the chamber and ask for the necessary corrections or remedies than to cause the Speaker to deal with this on behalf of the government.

I have a strong opinion of the proper constitutional role of the Speaker of the Senate, and I would like us to abide by that role. Perhaps someone could look at the *Debates of the Senate* of last Thursday to see what the intention of the chairman of the committee was when he brought the report to the chamber. Was it his intention that the report be tabled or was it his intention that it come forward for consideration under Government Business today?

This matter can be sorted out very easily.

Senator Lynch-Staunton: The answer can be found on page 933 of the *Journals of the Senate* dated May 19, 2005. It is there indicated that Senator Oliver moved, seconded by the Honourable Senator Comeau, that each report be placed on the Orders of the Day for consideration at the next sitting. Therefore, they are properly before us under the Orders of the Day. The question is under what rubric they should be before us. The argument is that they should be under Government Business because they speak to the Main Estimates. It is a technical argument and I do not see why we should spend more time on it.

Senator Rompkey: Senator Lynch-Staunton's remarks are eminently sensible, as is Senator Cools' suggestion. I ask for leave that we follow her suggestion. Senator Cools is quite right that the Senate is the master of its proceedings. If the Senate agrees to put it under Government Business, that is what we will do.

As Senator Lynch-Staunton said, this is a technical matter and we need not spend more time discussing it.

The Hon. the Speaker: I think we are ready to dispose of the matter.

Senator Cools: We are not quite ready.

The Hon. the Speaker: I gather we have agreed to proceed by way of leave, as Senator Cools suggested.

Senator Cools: That is the point to be determined. The house is its own master.

An Hon. Senator: The Speaker is standing.

Senator Cools: He should not be standing.

The Hon. the Speaker: I have the sense of the exchange. I gather that the house wishes to proceed by way of leave.

Is leave granted to include under Government Business the eleventh and twelfth reports of the Standing Senate Committee on National Finance?

Some Hon. Senators: Agreed.

Senator Cools: No.

The Hon. the Speaker: Leave is not granted. Do honourable senators wish a ruling on this?

Senator Rompkey: I thought we were proceeding on Senator Cools' suggestion that we seek leave to deal with this matter.

Senator Cools: I was speaking, and the Speaker cut me off. One does not cut someone off and then ask their permission to grant leave. That is not done.

We can make this an exception, but when something such as this happens, is it properly resolved by leave? Leave, after all, is to suspend a rule. The question is whether we should proceed by leave or by way of a motion. There is no doubt that there is agreement to proceed. The question is, how should we proceed? To some people, this seems to be splitting hairs. I say it is not. I say it is a matter of the constitutional usage of this place.

It is clear that senators want to move on and deal with the item. I am not convinced that substantive matters should be dealt with by unanimous consent rather than by motion.

The Hon. the Speaker: Honourable senators, items of government business are included under Reports of Committees. I am satisfied that they are there in error. It was suggested by the table that I point that out before we proceed. A question has been raised as to the orderliness of that, which I take as a question of order, which allows the Speaker to rule.

My ruling is that these matters were included under Reports of Committees in error. They are clearly matters of government business. They deal with the Main Estimates and should be included under Government Business. They are now so included and can be called.

Hon. Donald H. Oliver: Honourable senators, before proceeding to this item, it has been suggested that, since this order was not on the Order Paper under Government Business, I would be in error if I did not give 24 hours' notice before dealing with it. I would ask for clarification of that rule.

• (1540)

SPEAKER'S RULING

The Hon. the Speaker: Those honourable senators who have examined the Order Paper appreciate that the eleventh report of the Finance Committee deals with the estimates.

I rule that proper notice has been given. The reports are on the Order Paper and because they deal with the estimates, they are Government Business. An error has been made in printing the Order Paper placing them under Other Business. It is an error and it is correctable by simply noting the error and proceeding to place the reports under Government Business.

Honourable senators may wish to stand or adjourn the matter. In any event, we are properly on the item Reports of Committees under Government Business, the eleventh report of the Finance Committee.

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, we feel that notice was given of this item; it is on the Order Paper. Therefore, there is no difficulty with notice. We would be happy to hear Senator Oliver today and then perhaps take the adjournment so that Senator Day may speak when he is available.

Hon. John Lynch-Staunton: The only disadvantage to that suggestion is that this matter has been moved forward. Some honourable senators who perhaps wanted to speak to it or to listen to Senator Oliver later this day would be surprised to find out that the matter was given priority. Maybe that case does not exist. I do not like moving things around on the Order Paper without senators being alerted ahead of time that an item they thought would be addressed later will be called earlier, or vice versa.

Senator Rompkey: That is a good point. However, there was little intervening, as far as I can tell, between Government Business and Reports of Committees. This was the next item. The point is valid, but I do not think it should be a concern in this case.

THE ESTIMATES, 2005-06

SECOND INTERIM REPORT OF NATIONAL FINANCE COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the eleventh report (second interim) of the Standing Senate Committee on National Finance (2005-2006 Main Estimates—Foundations), tabled in the Senate on May 19, 2005.—(*Honourable Senator Oliver*)

Hon. Donald H. Oliver moved the adoption of the report.

He said: Honourable senators, you now have before you the report of the Standing Senate Committee on National Finance on foundations. This report sums up the committee's work on this issue between June 2002 and May 2005. During this period, we held nine meetings and heard 17 witnesses. These hearings allowed the committee to review thoroughly the April 2002 and the February 2005 reports of the Auditor General of Canada on the accountability of foundations. We also examined the progress being made by the federal government in addressing the accounting and accountability concerns raised by foundations.

The committee heard from the Auditor General, Ms. Sheila Fraser, on three different occasions. The Secretary of State for International Financial Institutions and the Comptroller General of Canada also appeared before the committee. We also received evidence from officials from the Department of Finance and Industry Canada. Moreover, over the past year, the committee invited representatives of three different foundations to provide information about their operations and to express their views on the accountability issues raised by the Auditor General. We had very good meetings at which we received full and courteous replies to senators' questions.

I will not take too much of your time, honourable senators, but I would like to share with you some of the observations and recommendations contained in the committee's report on foundations.

Since 1997, the federal government has been increasingly using foundations. These are independent, private, not-for-profit organizations that use up-front government endowment funding and arm's length boards of directors made up of

expert individuals. Between 1996-97 and 2004-05, the federal government has transferred some \$10.5 billion to 23 foundations. Only four of these foundations were established through legislation. The other 19 were established under the Canada Corporations Act.

Honourable senators, the up-front federal endowment and the interest earned on investments enable the foundations to fund eligible beneficiaries and projects over several years. This up-front endowment is managed in accordance with funding agreements that are entered into between the foundations and the federal government through the responsible or sponsoring minister. A number of funding agreements require that a foundation's endowment, together with future investment revenue, be committed over a specific period. This is the case, for example, with the Canada Foundation for Innovation, which must commit all of its funds by December 31, 2010. Other funding agreements, such as the Pierre Elliott Trudeau Foundation, require that the endowment be maintained in perpetuity, with only the investment revenue being used.

Funding agreements also contain several requirements that cover areas such as the purpose of the federal assistance; the expected results to be achieved from the specific foundation investment; the reporting, audit, evaluation and accountability requirements; prudent investment vehicles; dispute resolution mechanisms; and transparency, code of conduct and official languages requirements.

The legislation and/or funding agreement that creates a foundation also contains specific governance provisions. Foundations are managed by an independent board of directors whose members may, in some cases, have been appointed by the federal government. These boards of directors are supported in their day-to-day operations by a small staff. Funding decisions rest with the board of directors and are based on recommendations of expert peer review panels. In many cases, funding from other governments and the private sector must be secured before the project can proceed.

Honourable senators, the federal government believes that the foundation's arm's length nature, financial stability and focused expertise allow them to deliver public policy in an effective, non-partisan manner. However, the Auditor General has expressed the concern that foundations do not meet the essential requirements for accountability to Parliament. These requirements include the credible report of results; effective ministerial oversight, and an adequate audit and evaluation framework. Ms. Fraser also raised questions about how the government accounts for the transfer of funds to foundations in its own books.

In her 2002 report, the Auditor General stressed the importance of keeping Parliament informed about the activities of foundations and their use of federal funds. She indicated that this information should be reported in the corporate plans and annual reports, and that evaluation findings on the overall performance of the foundation should be tabled in Parliament.

To address these concerns, the federal government announced in its 2003 Budget Plan a number of measures aimed at strengthening the transparency of foundations to Parliament

and to the public at large. In her 2005 report, Ms. Fraser noted that satisfactory process has been made by the federal government in that area. However, during her appearance before our committee last February, it was noted that only the sponsoring ministers of the legislative foundations are required to table information to foundations.

The committee believes that additional progress can be made in the reporting by sponsoring ministers and that all annual reports, summaries and corporate plans of foundations should be tabled to Parliament. We also believe that foundations should provide better information on results achieved. Accordingly, in our report tabled in the Senate, we recommend that sponsoring ministers table in Parliament the corporate plans or summaries and the annual reports of foundations in a timely manner. We also recommend that, in consultation with the foundations, the sponsoring departments encourage them to include meaningful information on results in their plans and reports.

In her 2002 report, and again in her 2005 report, the Auditor General expressed concern about the lack of ministerial oversight of foundations. In particular, no provisions currently exist whereby the federal government can act if there is a shift in policy direction, a change in government or a change in a government's fiscal position. There is a fear that foundations could, therefore, end up working at cross purposes to general government policy.

• (1550)

The Finance Committee concurs with Ms. Fraser's concern about the lack of a mechanism for ministerial intervention in situations where fiscal and/or political circumstances change. For this reason, the committee recommends that an adjustment mechanism be put in place to allow sponsoring ministers to intervene in cases where circumstances have changed considerably since the creation of foundations for which they have been responsible. As honourable senators will recall, Ms. Fraser repeatedly suggested that the Auditor General of Canada be appointed the external auditor of foundations. She insisted that her office be responsible for performance audits of foundations. In its initial response, the federal government stated that having the Auditor General as external auditor of foundations "could undermine the independence of foundations, reduce their operational flexibility and organizational effectiveness and thereby reduce their usefulness in achieving the government's policy objectives."

Then the federal government changed its position with the tabling of Bill C-43, the Budget Implementation Act, 2005. More precisely, Part 7 of the bill includes provisions that would amend the Financial Administration Act and the Auditor General Act. Bill C-43, now in the other place, would effectively expand the Auditor General's mandate over certain foundations, namely those that have received, in any five consecutive years, \$100 million or more from the federal government. The Office of the Auditor General of Canada would have access to those foundations for the purpose of carrying out both performance and compliance audits. Results of audit work in foundations would form part of the Auditor General's reports to Parliament.

The committee believes that the proposed changes will significantly improve the accountability framework of foundations. Moreover, the tabling of reports on compliance and performance audits of foundations by the Auditor General of Canada will enhance considerably the reporting of information on foundations to the Parliament of Canada.

With respect to the evaluation regimes of foundations, most funding agreements require that periodic evaluations of foundations be undertaken. The foundations set out their own terms of reference for evaluations. Similarly, most sponsoring departments are required to perform evaluations of their respective foundations. In this case, however, departments must follow the standards set out in the Treasury Board Evaluation Policy. In her 2005 report, the Auditor General stressed that standards comparable to those of Treasury Board policy should be used by foundations.

Honourable senators, the Finance Committee supports this recommendation. The committee believes that this practice can further strengthen the accountability framework for foundations. It will also ensure that the cost and effectiveness of foundations are assessed according to a common set of standards. For these reasons, the committee recommends in its report that the federal government seek every opportunity to persuade all existing foundations to incorporate into their evaluation framework the standards set out in the Treasury Board Evaluation Policy when commissioning independent evaluations.

Honourable senators, since 1997-98, the Auditor General's observations on the federal government's summary financial statements in the Public Accounts of Canada have raised concerns about how the government accounts for the transfer of funds to foundations. The concerns focus on the fact that the federal government has already recorded these transfers as expenses of the Government of Canada, although the foundations do not expect to use the funds for many years. Data from the Office of the Auditor General indicate that as of March 31, 2004, some \$7.7 billion of a total \$9.1 billion transferred to 15 foundations was still in the bank accounts of the foundations as investments earning interest. The money had not been spent but had been expended 100 per cent by the Government of Canada.

Ms. Fraser suggested that such accounting treatment of transfers to foundations has resulted in a reduction of the reported annual fiscal surplus in the year that the funds were transferred to foundations. However, she could not state unequivocally that this accounting practice contravenes the standards established by the Public Sector Accounting Board, PSAB, of the Canadian Institute of Chartered Accountants. Ms. Fraser informed the Finance Committee that the PSAB recently issued a new accounting standard entitled Government Reporting Entity, which will have to be implemented for 2005-06. This standard states that the government reporting entity should comprise all organizations that are controlled by the government. The fundamental question is whether provisions of the legislation establishing some foundations, or the funding agreements with some foundations, give the federal government control as envisioned by this new accounting standard. Obviously, the

determination of the fact that government control exists requires the assessment of professional judgment. The Finance Committee also learned that the PSAB is working on another project that seeks guidance on accounting for government transfer payments, including multi-year funding of the kind used for foundations. However, this project is still at an early stage. The issue has been highly controversial, and consensus within the government accounting community throughout Canada at all levels of government has remained elusive.

The committee was pleased to hear that the Office of the Comptroller General is in discussions with the Auditor General of Canada on the whole issue of accounting for federal transfers to foundations, and that remains a work in progress. The committee understands that accounting issues often boil down to differences of interpretation. The report stresses, however, that these accounting issues have been raised for a number of years by the Auditor General and dealt with in the Senate National Finance Committee. It is the hope of the committee that these issues can be resolved in a timely manner. The committee believes that Parliament should be kept informed of the progress of the discussions over the accounting of federal transfers to foundations, as well as any new development related to the two projects of the Public Sector Accounting Board. The report recommends that the Office of the Comptroller General and the Office of the Auditor General pursue their discussions and prepare a report that details their progress in clarifying the PSAB guidance concerning the accounting treatment of federal transfers to foundations. The report also recommends that this report be tabled in Parliament.

Honourable senators, the Treasury Board Secretariat is responsible for the federal government's Policy on Transfer Payments. This policy requires all departments to report to Parliament on transfer payments that exceed \$5 million. The policy also states that transfer payments should not be made in advance of need. In her 2002 report, the Auditor General noted that foundations are exempted from the policy's provisions against making payments in advance of need. In both her 2002 and 2005 reports, Ms. Fraser recommended that the use of exemptions to the transfer payment policy be reviewed.

The Finance Committee is concerned by the application of the transfer payment policy to foundations. As I mentioned earlier, honourable senators, the federal government transferred some \$10.5 billion to 23 foundations between 1996-97 and 2004-05. In order to transfer those funds to foundations in advance of need, the federal government had to seek exemptions from Treasury Board policy. The rationale behind the exemptions is unclear. The committee's report recommends that a review of the use of such exemptions be undertaken and that the findings of the review be reported to Parliament.

The Hon. the Speaker: The honourable senator's time has expired.

Senator Oliver: Honourable senators, I request leave to continue for five or six minutes.

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

Hon. Bill Rompkey (Deputy Leader of the Government): Yes.

Senator Oliver: Over the years, the Treasury Board Secretariat has developed a comprehensive database on foundations. When Ms. Fraser appeared before the Senate Finance Committee last February, she indicated that this database could be useful for undertaking a government-wide evaluation of foundations. In her view, this evaluation should assess the advantages and disadvantages of foundations vis-à-vis other traditional delivery mechanisms such as granting councils.

The committee concurs with the Auditor General that a government-wide evaluation of foundations should be initiated. The committee believes that the outcomes of such an evaluation would provide highly useful information to parliamentarians, who must vote on the creation and funding of new foundations as well as on funding increases to existing foundations.

• (1600)

Accordingly, in its report the committee recommends that the Treasury Board Secretariat undertake an evaluation of foundations, which should include the appropriateness of the use of foundations, what they cost and how effective they have been. We also recommend that the results of the evaluation be reported to Parliament.

Honourable senators, as I mentioned earlier, only four out of 23 foundations were created by legislation. Parliament specifically reviewed and debated the accountability and governance arrangements for these foundations as part of the legislation for them. This included requirements for auditing, evaluation and reporting to Parliament through the responsible minister.

In contrast, the other 19 foundations that were not established by legislation were established by cabinet under the Canada Corporations Act. Their accountability and governance arrangements are found in the funding agreements that were entered into between these foundations and their sponsoring ministers. These funding agreements, however, were not tabled in Parliament. Therefore, parliamentarians had little opportunity to debate the objectives, organizational structure, reporting requirements and level of funding of those foundations.

The committee is concerned that Parliament was not given the ability to examine in detail and debate openly the creation of the vast majority of the foundations. We believe that Parliament should have a greater role in the determination of accountability and governance arrangements of all foundations and, accordingly, our report recommends that the federal government seek parliamentary review of any proposed funding agreement for new foundations or proposals for changes to existing foundations.

Honourable senators, the accountability and the accounting of federal transfers to foundations have been issues of particular interest to the Standing Senate Committee on National Finance for a number of years now. We have reviewed carefully the 2002 and 2005 audits of the Office of the Auditor General on foundations and examined progress by the federal government

in this area. The recommendations contained in our report will ensure sound accountability of the federal government's created foundations.

The committee's interest in the accounting and accountability issues of the foundations is ongoing. Let me assure you, honourable senators, that we intend to monitor the progress of the federal government in this area and to comment further as we deem necessary.

Honourable senators, in closing, I would move that if this report is adopted, pursuant to rule 131(2), found at page 109 of the *Rules of the Senate*, the Senate requests a complete and detailed response from the government, with the President of the Treasury Board and the Minister of Finance being identified as the ministers responsible for responding to this report.

The Hon. the Speaker: Is leave granted, honourable senators, for that Notice of Motion to be given now?

Hon. Anne C. Cools: No.

Senator Rompkey: I was about to move adjournment of the debate.

Senator Cools: It is not in order. That motion was without notice.

The Hon. the Speaker: I would like to clarify, honourable senators, that you may proceed as you have indicated. However, you must proceed under Notices of Motion, which you can do tomorrow.

On motion of Senator Rompkey, for Senator Day, debate adjourned.

THIRD INTERIM REPORT OF NATIONAL FINANCE COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the twelfth report (third interim) of the Standing Senate Committee on National Finance (2005-2006 Main Estimates—Officers of Parliament), tabled in the Senate on May 19, 2005.—(*Honourable Senator Oliver*)

Hon. Donald H. Oliver moved the adoption of the report.

He said: Honourable senators, you now have before you the third interim report on the Main Estimates 2005-06 of the Standing Senate Committee on National Finance, which deals with the subjects of the Officers of Parliament. Honourable senators may recall that this report on the Officers of Parliament was promised in the committee's first interim report of the Main Estimates 2005-06. At that time, it was noted that a recurring theme among Officers of Parliament who appeared as witnesses before the committee was the difficulty that they experienced in attempting to set a budget to carry out the responsibilities assigned to them by Parliament.

This report on the Officers of Parliament sums up the committee's work, begun in the 2004-05 fiscal period and completed in the current fiscal year. As honourable senators

may know, the title “Officer of Parliament” is not defined in any statute or any parliamentary publication. Different parliamentary committees and academic commentators, at one time or another, have associated the position with that of several parliamentary staff positions and organizations that serve Parliament. While there is no overall agreement on who should be included in the list of Officers of Parliament, the overlap usually encompasses the five officers whose estimates were examined by the Standing Senate Committee on National Finance. This group comprises a set of organizations that, while enjoying some freedom from the government, both serve Parliament and protect the public.

Honourable senators, during its examination of these estimates, the Standing Senate Committee on National Finance reviewed and discussed the expenditure plans of five Officers of Parliament. These were: the Office of the Auditor General, the Office of the Chief Electoral Officer, the Office of the Privacy Commissioner, the Office of the Information Commissioner, and the Office of the Commissioner of Official Languages.

Honourable senators will recall that while the Standing Senate Committee on National Finance is interested in many aspects of the organizations whose estimates are under its purview, its focus often remains on planned spending of organizations. With respect to the Officers of Parliament, the committee was interested in the process that determines the annual level of funding available in the estimates for these five officers that we examined. While each officer experiences different specific problems, there were similarities in their budget determination process that the committee wished to highlight in this report. In particular, the committee is concerned that this process by which their budgets are determined may no longer be appropriate for the role they are required to fulfil as Officers of Parliament.

The perceived risk in the current process as it pertains to Officers of Parliament is that a government may undermine the independence of parliamentary organizations by under-funding their activities. This sentiment was expressed clearly by the Auditor General, who said that she believes:

...that an appropriate funding level must be determined in an objective manner that is not influenced by those whom we audit. The existing process for determining our funding level is not sufficiently independent and impartial to ensure that our budget is appropriate for meeting Parliament's expectations.

She added further that:

As a matter of principle, I believe that this situation should be corrected so that there is no possibility of influence, real or perceived.

Honourable senators, the Auditor General was not alone in voicing this concern. The Honourable John Reid, the Information Commissioner, summed up the situation well when he stated:

I think there is a real problem in terms of the way in which parliamentary officers are funded. It is a very difficult proposition, I believe, for the government itself to deal with

this sort of a hybrid organization that is, in a sense, part of the civil service and yet has no reporting responsibilities to the civil service. There has to be a considerable amount of thinking about how these officers are to be financed in the future.

During our hearings, the committee entertained a number of suggestions on how the budget determination process for Officers of Parliament might be reformed. Honourable senators, let me outline two possible approaches. The first suggestion would see the Officers of Parliament prepare their budget proposals for consideration by the Speakers of the House of Commons and the Senate. These proposed spending plans would then be subjected to a review by specific committees of Parliament. The proposed budget would then be forwarded to the Treasury Board for inclusion into the estimates. The overarching argument would be that Parliament — not the executive, but Parliament — should be responsible for approving the funding of its officers.

A second suggestion involved setting up a panel of experts to determine the appropriate level of funding for each Officer of Parliament. One presumes that these experts, or so-called “blue ribbon panel members,” would be familiar with the workings and responsibilities of the Officers of Parliament for whom they are required to set a budget.

• (1610)

Finally, it was suggested that a model similar to that used for the Senate Ethics Officer and the House of Commons Ethics Commissioner be used. This approach required that the Speakers of the Senate and the House of Commons respectively examine the estimates. They then transmit their recommendations to the President of the Treasury Board who presents these estimates to the House of Commons as part of the overall estimates. He does not change them but presents them as part of the overall estimates.

Honourable senators, all three approaches have some merit. In the end, the issue is how to establish a balance between the independence of their office and retain some accountability for the expenditure of public funds.

In its deliberations, the committee concluded that there is merit to the concerns of the Officers of Parliament that their budgets need to be reformed. Although the committee places a low probability on the prospect of a government deliberately underfunding the Officers of Parliament, it believes the appearance of such a situation should be avoided.

The committee was also concerned by the claim of the Information Commissioner that, as a result of budget constraints imposed by the Treasury Board, his investigation staff did not have time for such things as research and training. In the view of the committee, this is extremely worrisome because it could lead to errors in judgment on the part of the staff of the Information Commissioner, with serious consequences for government activities. In the view of the committee, it is imperative that decisions of parliamentary organizations be carried out at a high level of competence to ensure these decisions are not detrimental to Canada and to Canadians as a whole.

However, honourable senators will agree that Parliament and Canadians have a right to know that their government is behaving correctly. Government cannot operate in a cloud of secrecy. This is the basic function of the Officers of Parliament. This task takes on even greater importance as those Officers of Parliament try to protect people's privacy, their language and electoral rights, and ensure accountability in the spending of public funds. If Parliament does not have proper funding for parliamentary officers, the country might find itself in a situation where decisions are contrary to its self-interest. Therefore, it is important that the Officers of Parliament be adequately funded not only in the interests of its citizens but also that of the government.

Honourable senators, after weighing these and other concerns, the Standing Senate Committee on National Finance has decided to make three recommendations. First, given that the Officers of Parliament have indicated that there are serious difficulties with the way that their budgets are set, and given that Officers of Parliament serve and report to Parliament, it would be appropriate for parliamentarians to be more actively involved in the preparation of the budget proposals that the officers will submit to the Treasury Board. Specifically, the committee recommends that:

The process of determining the budgets of the Officers of Parliament actively involve Parliamentarians through the Speakers of each House and an administrative committee before the budgets are submitted to the Treasury Board for inclusion in the Estimates.

Second, the committee observed that there are considerable differences in the ways that Officers of Parliament are appointed or removed from office. The committee believes that the inconsistencies in the appointment and removal process for Officers of Parliament should be reconciled. It is also our view that parliamentarians should be involved in the process of recruiting, approving and removing Officers of Parliament. Therefore, the committee recommends that:

The appointment process for all Officers of Parliament be reviewed and streamlined and that Parliament be more engaged in their recruitment, approval and removal.

Finally, honourable senators, the Officers of Parliament expressed gratitude for the opportunity to share with senators their views and concerns regarding the many aspects of their work. The committee believes that the Officers of Parliament should be able to discuss their work with senators on a more regular basis. One Officer of Parliament had never been called before a Senate committee. It was the first time. Therefore, the committee recommends that:

The Senate consider revising its Rules in order to refer all reports of the Officers of Parliament to an appropriate standing committee.

Honourable senators, the committee's interest in the Officers of Parliament is ongoing. It is our intention to monitor the progress

of the federal government in this area and to comment further as we deem appropriate.

On motion of Senator Rompkey, for Senator Day, debate adjourned.

• (1620)

THE SENATE

MOTION TO AMEND RULE 96, CLAUSE-BY-CLAUSE CONSIDERATION—REFERRED TO COMMITTEE

Hon. Tommy Banks, pursuant to notice of May 19, 2005, moved:

That the *Rules of the Senate* be amended in rule 96 by adding, in subsection (7), the following:

“In particular, clause-by-clause consideration of legislation shall not be dispensed with unless with leave.”

The Hon. the Speaker: I will see Senator Banks now. However, he would like to move, with leave, another motion.

Senator Banks: Honourable senators, I think the motion speaks for itself. It is clear and derives from some uncertainty which existed in this place, which I would like to suggest we would all benefit from having cleared up. The best way to do that would be with leave of the house. It would be my second motion, with leave, honourable senators, that we refer this motion to the Standing Committee on Rules, Procedures and the Rights of Parliament now.

The Hon. the Speaker: In other words, Senator Banks does not wish to speak to the motion?

Senator Banks: No.

The Hon. the Speaker: Before I go to Senator Banks' request for referral, I should look to the chamber to see if another honourable senator would like to speak. Senator Banks' motion would require leave, so I will take my seat. I see no one rising. Senator Banks wants the amendment referred to committee, and does not want us to deal with it now?

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, it is our understanding that Senator Banks wants to refer this motion to committee now.

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

Hon. Senators: Agreed.

Motion referred to the Standing Committee on Rules, Procedures and the Rights of Parliament.

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

CONTENTS

Tuesday, May 31, 2005

	PAGE		PAGE
SENATORS' STATEMENTS		Finance	
Supreme Court of Canada		Legislative and Regulatory Framework for Federally Regulated Pension Plans—Fund to Guarantee Pensions.	
Decision on <i>Canada (House of Commons) v. Vaid</i> .		Hon. Donald H. Oliver	1353
Hon. Serge Joyal	1348	Hon. Jack Austin	1353
Canada's Level of Literacy		Indian Affairs and Northern Development	
Hon. Donald H. Oliver	1348	Commitments Resulting from	
International Policy Statement		Cabinet/Aboriginal Associations Retreat—Funding of Proposals.	
Hon. Jeremiah S. Grafstein	1349	Hon. Gerry St. Germain	1353
Toronto Police Service		Hon. Jack Austin	1354
Tribute to Child Exploitation Unit.		Privy Council	
Hon. Consiglio Di Nino	1349	Indian Residential Schools Resolution—Funding of Settlements.	
Distinguished Visitor in the Gallery		Hon. David Tkachuk	1354
The Hon. the Speaker.	1350	Hon. Jack Austin	1355
<hr/>		Delayed Answers to Oral Questions	
ROUTINE PROCEEDINGS		Hon. Bill Rompkey	1355
Commissioner of Official Languages		Health	
2004-05 Annual Report Tabled	1350	Private and Public Delivery of Services.	
Spirit Drinks Trade Bill (Bill S-38)		Question by Senator Keon.	
First Reading.		Hon. Bill Rompkey (Delayed Answer)	1355
Hon. Bill Rompkey	1350	Fisheries and Oceans	
Canada-United States Inter-Parliamentary Group		Nunavut—Report on Development of Arctic Fisheries Industry.	
Canadian/American Border Trade Alliance Conference,		Question by Senator Comeau.	
April 24-26, 2005—Report Tabled.		Hon. Bill Rompkey (Delayed Answer)	1355
Hon. Jeremiah S. Grafstein	1350	<hr/>	
Transport and Communications		ORDERS OF THE DAY	
Notice of Motion to Authorize Committee to Extend Date		Aeronautics Act (Bill S-33)	
of Final Report on Study of Media Industries.		Bill to Amend—Second Reading—Point of Order—	
Hon. Joan Fraser	1350	Speaker's Ruling Reserved.	
Foreign Affairs		Hon. David Tkachuk	
Notice of Motion to Authorize Committee to Study International		Hon. Jack Austin	
Policy Statement.		Hon. Terry Stratton	
Hon. Peter A. Stollery	1351	Hon. Bill Rompkey	
Notice of Motion to Authorize Committee to Meet During		Hon. Anne C. Cools.	
Adjournment of the Senate.		The Hon. the Speaker.	
Hon. Peter A. Stollery	1351	Business of the Senate	
Progress Report on Quality End-of-Life Care		The Hon. The Speaker	
Notice of Inquiry.		Hon. John Lynch-Staunton	
Hon. Sharon Carstairs	1351	Hon. Anne C. Cools.	
<hr/>		Hon. Bill Rompkey	
QUESTION PERIOD		Hon. Donald H. Oliver.	
Justice		Hon. Bill Rompkey	
Commission of Inquiry into the Sponsorship Program		Hon. John Lynch-Staunton	
and Advertising Activities—Legal Parameters.		The Estimates, 2005-06	
Hon. Terry Stratton	1351	Second Interim Report of National Finance Committee—	
Hon. Jack Austin	1351	Debate Adjourned.	
Commission of Inquiry into the Sponsorship Program		Hon. Donald H. Oliver.	
and Advertising Activities—Laying of Charges for Wrongdoing.		Hon. Bill Rompkey	
Hon. Gerry St. Germain	1352	Hon. Anne C. Cools.	
Hon. Jack Austin	1352	Third Interim Report of National Finance Committee—	
Privy Council Office		Debate Adjourned.	
Commission of Inquiry into the Sponsorship Program		Hon. Donald H. Oliver.	
and Advertising Activities—Strategic Office for Preparing		The Senate	
Government Responses.		Motion to Amend Rule 96, Clause-by-Clause Consideration—	
Hon. Marjory LeBreton	1352	Referred to Committee.	
Hon. Jack Austin	1352	Hon. Tommy Banks	
		Hon. Bill Rompkey	



If undelivered, return COVER ONLY to:
Public Works and Government Services Canada
Publishing and Depository Services
Ottawa, Ontario K1A 0S5