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Monday, October 30, 2006

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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THE SENATE

Monday, October 30, 2006

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

Prayers.

SENATOR'S STATEMENT

THE HONOURABLE NOËL A. KINSELLA

CONGRATULATIONS ON RECEIVING DOCTORAL DEGREE IN PHILOSOPHY CONFERRED BY THE DOMINICAN UNIVERSITY COLLEGE

Hon. George J. Furey: Honourable senators, I rise today to pay tribute to our Speaker, the Honourable Noël A. Kinsella, who yesterday received a Doctorate of Philosophy *honoris causa* from the Dominican University College, in Ottawa.

Senator Kinsella was acknowledged as a distinguished scholar, citizen, statesman and champion of human rights.

A man of great faith and one of Canada's most respected philosophers, the Dominican University College also wished to recognize Senator Kinsella's contributions both to the advancement of studies in philosophy and to his ability to translate thought into action.

Yesterday, Jean-François Méthot, Chair of the Department of Philosophy stated:

> We deeply recognize ourselves and our efforts in Senator Kinsella's approach to society, just politics and the life of faith...
>
> He is a model for our students and graduates... an enlightened, tolerant human rights advocate, accepting a coherent and open view of Christian and Catholic ethics, while respecting individual's rights to difference and dissent in our modern democracy.

In receiving his honorary degree, Senator Kinsella stated:

> Philosophers who are reflecting today on the nature of peace, justice and the nature of human rights in the international community are to be encouraged. The dialogue between civilizations must supplant the clashes among civilizations. It is here where philosophy can play a crucial role for humanity...
>
> May philosophers of all schools be encouraged to bring reason and insight to the essential dialogue of today.

Your Honour, your words have a special resonance for this chamber as we too work toward building dialogue between communities and nations, with reason, insight and a desire to do what is good and right for one's fellow human beings.

Honourable senators, please join me in congratulating Senator Kinsella on the recognition he received from the Dominican University College. His distinguished career as a teacher, philosopher and senator continues to bring honour to this institution.

[*Translation*]

ROUTINE PROCEEDINGS

THE ESTIMATES, 2006-07

SUPPLEMENTARY ESTIMATES (A) TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, pursuant to rule 28(3) of the *Rules of the Senate,* I have the honour to table, in both official languages, the Supplementary Estimates (A) 2006-07, for the fiscal year ending March 31, 2007.

NOTICE OF MOTION TO AUTHORIZE NATIONAL FINANCE COMMITTEE TO STUDY SUPPLEMENTARY ESTIMATES (A)

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

> That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (A) for the fiscal year ending March 31, 2007, with the exception of Parliament Vote 10.

NOTICE OF MOTION TO REFER VOTE 10 TO STANDING JOINT COMMITTEE ON THE LIBRARY OF PARLIAMENT

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

> That the Standing Joint Committee on the Library of Parliament be authorized to examine the expenditures set out in Parliament Vote 10 of the Supplementary Estimates (A) for the fiscal year ending March 31, 2007; and
>
> That a message be sent to the House of Commons to acquaint that House accordingly.

• (1810)

[*English*]

CONTRIBUTIONS OF THE HONOURABLE HOWARD CHARLES GREEN TO CANADIAN PUBLIC LIFE

NOTICE OF INQUIRY

Hon. Lowell Murray: I give notice that two days hence, I will draw the attention of the Senate to the faithful and exemplary service to Canada during his entire adult lifetime of the late Honourable Howard Charles Green of British Columbia.

[*Translation*]

QUESTION PERIOD

DELAYED ANSWER TO ORAL QUESTION

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have a response to a question raised in the Senate by Senator Callbeck on September 26, 2006, regarding funding for legal aid.

JUSTICE

FUNDING FOR LEGAL AID

(Response to question raised by Hon. Catherine S. Callbeck on September 26, 2006)

Canada's new government believes that the federal, provincial and territorial governments have a shared interest in a justice system that is accountable, efficient, accessible and responsive. Legal aid is a critical component of such a system.

The federal government has informed the provinces and territories that it will, for fiscal year 2006-07, maintain its fiscal year 2005-06 funding levels for criminal legal aid and immigration and refugee legal aid, approximately $123.5 million.

As regards funding in future years, the federal government will continue to work with the provinces and territories to develop a mutually agreeable approach to funding legal aid in 2007 and beyond.

[*English*]

ORDERS OF THE DAY

CONSTITUTION ACT, 1867

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator LeBreton, P.C., seconded by the Honourable Senator Comeau, for the second reading of Bill S-4, to amend the Constitution Act, 1867 (Senate tenure).

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

Hon. Joan Fraser (Deputy Leader of the Opposition): Honourable senators, I know that at least one of my colleagues — namely, Senator Dallaire — wishes to speak to this bill.

As you may have noticed, we skipped Question Period, and I do not think we called to warn him that we were skipping Question Period. We are galloping through the preliminary parts of our agenda tonight, and I think it would be a little hard line to call a question when I know he wants to speak.

If we could continue the adjournment of the debate, I think that would be a fine thing.

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

Hon. Senators: Agreed.

On motion of Senator Fraser, for Senator Dallaire, debated adjourned.

STUDY ON TELECOMMUNICATIONS AND RADIO APPARATUS USER FEE PROPOSAL

REPORT OF TRANSPORT AND COMMUNICATIONS COMMITTEE ADOPTED

The Senate proceeded to consideration of the fifth report of the Standing Senate Committee on Transport and Communications (*document entitled: "New Fees for Services Provided by Industry Canada Relating to Telecommunications and Radio Apparatus"*) presented in the Senate on October 26, 2006.

Hon. Lise Bacon moved the adoption of the report.

Motion agreed to and report adopted.

FEDERAL ACCOUNTABILITY BILL

REPORT OF COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-2, An Act providing for conflict of interest rules,

restrictions on election financing and measures respecting administrative transparency, oversight and accountability, with amendments and observations) presented in the Senate on October 26, 2006.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I believe that, if His Honour were to put the question, he would find unanimous consent to give Senators Stratton and Day 45 minutes each to debate the study of the report.

The Hon. the Speaker: Honourable senators, is it agreed?

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, the Senate has spoken. As Speaker, I must point out two important *Rules of the Senate*: rules 99 and 101.

Hon. Terry Stratton: Honourable senators, I rise to speak to the committee report on Bill C-2.

Before saying a few words about the report and the process that led up to it, I want to thank the members on our side of the Standing Senate Committee on Legal and Constitutional Affairs for their work over the past four months.

I also want to thank the expert witnesses who shared their knowledge and perspectives with the committee. I extend a special thanks to the committee staff who worked exceptionally long hours in the background to ensure that everything ran as smoothly as possible.

In particular, I want to thank our clerk, Gérald Lafrenière, who had the responsibility of lining up a never-ending stream of witnesses as the opposition asked for more and more hearings. He also had the responsibility to ensure that all the T's were crossed and I's were dotted as we worked our way through amendment upon amendment upon amendment last Tuesday and Wednesday.

It was a monumental task to pull everything together in the report in time for the report to be tabled on Thursday in both official languages.

The Library of Parliament staff also deserves our thanks, as do Joe Wild and Catrina Tapley from the Treasury Board and Michel Patrice of the Senate Law Clerks Office. Their advice at the committee table was particularly helpful as we worked our way through the amendments.

We have spent many hours, I would say too many hours, providing this legislative initiative with great extent, focus and attention. In fact, the committee sat for three weeks out of normal parliamentary sitting time. We met 30 times, sitting just under 106 hours, excluding breaks. We heard from 158 witnesses as opposed to something such as 66 witnesses in the House of Commons committee.

The committee report recommends some 156 amendments of which more than 100 came from the opposition.

For the most part, the government amendments were technical or minor in nature. These amendments corrected drafting errors and omissions and made other changes to ensure that the legislation fully reflects the original policy intent. I do not propose to speak to each amendment, as many were technical, but I will provide honourable senators with several examples.

On the advice of the Senate law clerk, in a number of places the committee report amends the term "senior public office-holders" to read "designated public office-holders." Because the definition of public office-holders includes senators, while the definition of senior public office-holders does not, our law clerk was concerned about having assistant deputy ministers listed in what is known as the senior category.

Changing the title of public office-holders included under the lobbying act from "senior" to "designated" will better respect the range and hierarchy of positions to be included under this definition.

Another series of technical amendments added to the list of public office-holders are ministerial appointments whose appointments are approved by the Governor in Council. This amendment reflects the original policy intent.

There was a technical amendment to the procedure for laying the estimates of the conflict of interest and ethics commission report to Parliament. A technical amendment was made to a section that governs members of the other place to clarify that "member" meant member of the House of Commons.

In the section governing public service appointments, after the bill went through the other place, it was agreed that it would be appropriate to have advisers to deputy ministers appointed by Governor in Council, and the committee approved an amendment to correct this.

In the section governing the parliamentary budget officer, the committee approved an amendment to provide a specific mandate to undertake research into the estimates.

• (1820)

This does not deviate from the policy underlying the bill, and indeed serves to reinforce it.

Another amendment to correct an error made when the bill went through the other place will ensure that Crown corporations are subject to the Access to Information Act or the Privacy Act and continue to also be subject to the Library and Archives of Canada Act. To ensure consistency between the Privacy Act and the Access to Information Act, the committee approved an amendment to the Privacy Act to include the Asia Pacific Foundation of Canada and the Pierre Elliott Trudeau Foundation. To correct a drafting oversight, the committee agreed to an amendment to allow for the appointment of directors of the Canadian Tourism Commission for up to a four-year term, consistent with the terms provided for the other boards in the bill.

Some of the amendments approved by the committee correct drafting errors made when members of the other place amended the bill. As well, in a few places there are corrections to ensure the English and French versions of the law are consistent.

Honourable senators, these were all non-controversial amendments that sought to correct drafting errors or to reinforce the policy content of the bill. They do not seek to fundamentally alter the policy behind the bill, a bill that was unanimously passed by the elected members in the other place.

However, the vast majority of the amendments approved by the committee came from the opposition, and virtually all of those opposition amendments were passed on division. I expect that opposition senators will highlight their own amendments, but I will draw a few to the attention of the Senate.

First and foremost was a rather large package of amendments to maintain a separate ethics officer for the Senate. The committee record will clearly show that this series of amendments was carried on division.

The package of amendments to the Canada Elections Act introduced by the opposition will raise the contribution limits to $2,000 a year from $1,000 proposed in the bill and would keep the existing $5,000 limit until January 1 of the year following Royal Assent. In other words, if the bill is not passed in the House of Commons back to this house before we rise at Christmas, the existing limits will remain in effect until December 31, 2007. The question is: Why?

The other interesting issue is raising the limit from $1,000 to $2,000. It does not sound like much except when you consider that someone can contribute to a candidate, to a constituency and to the party. In other words, $3,000 is currently proposed. As amended, that would rise to $6,000. That does not sound like much, but 99 per cent of donations to any party are under $200. Why do we need $2,000? We are trying to democratize giving to political parties and to have a contribution of less than $200 mean something.

A figure of $1,000 is bad enough; $2,000 raises it beyond the limit, and ordinary Canadians think those donating that amount may have special access when they should not. Whether or not that is real does not matter; that is the perception.

When the amount is raised from $1,000 to $2,000, one can understand why, in our view, this is clearly counter to the policy objectives of the bill. I will have more to say about this point during my remarks at third reading.

To ensure that public service appointments are made on the basis of merit, Bill C-2 ends the giving of politically exempt staff priority for public service appointments. The opposition amendment will grandfather those who qualify for this special treatment. Again, one must ask: Why?

Amendments to the Access to Information Act provisions of Bill C-2 will restore the status quo exemption for the Canadian Wheat Board, running counter to the policy set out in the bill of shining a light on more Crown corporations. As an aside, the Canadian Wheat Board has said the Access to Information Act will demand confidential information with respect to negotiations on the selling of wheat to other private corporations or to other foreign countries. That is not true, because that kind of information is already protected. This is redundancy.

Other amendments will limit the reach of the Access to Information Act to information created after the proposed accountability act's Royal Assent. We were told by legal counsel that this is a departure from the past practice of including all records under the control of an entity at the time it became subject to the act. One becomes curious as to why. These foundations created by the Liberal government are exempt now? Is there something going on that we should know? That is what happens when you put forward an amendment like this. It raises that question: Why?

There are opposition amendments in a number of places to reduce the proposed limits for initiating a prosecution under the laws governing lobbyists in elections. This is contrary to the government's policy objectives of providing additional time to initiate a prosecution. In other words, we have extended the time allowed for investigation to five years. Once one discovers that there may be a problem, it takes time to investigate and a five-year limit would be required to do that. For example, the origins of the Gomery inquiry date back to 1995.

An amendment to the Lobbyists Registration Act will ban lobbying for a five-year period to anyone who works for a company that enters into a contract with the government. It is not my intention to comment extensively at this point on the opposition amendments, however.

I would like to draw the attention of the Senate to a potential problem that was pointed out to us by legal counsel at the committee table. The exemption regime set out in the bill is meant to deal with public office-holders and is not structured in a manner that would handle the hundreds of thousands of Canadians who work for companies that provide goods and services to the federal government. The exemption process in the bill does not reference anyone other than public office-holders. If it did, that process would come to a grinding halt from the sheer volume of exemption requests.

The example given to the committee by legal counsel relates to IBM. If IBM contracts with the government, everyone on IBM's payroll would automatically be subject to the five-year lobbying ban. The amendment went ahead despite this wording. Indeed, in virtually every case where legal advice or wording was offered at the table, the opposition insisted on going ahead with their amendments anyway. I fully expect that our opposition colleagues will be highlighting some other amendments.

The President of the Treasury Board has said that any amendments that the Senate makes to the bill will be judged on their merits, and we will see how many are ultimately judged to be meritorious.

Finally, there are the observations that were tabled along with the report. I want Hansard to clearly show that while these have been presented as observations of the committee, they are observations of the opposition Liberal majority sprung on the government minority at the very last minute.

Indeed, not only did the government senators disagree with the arguments advanced in the observations, we were also deeply concerned by the use of committee observations as a device to make very partisan and personal statements.

Honourable senators will note that there is no such similar partisan attack on our part by way of a minority report. To attempt to argue for changes or to ask for time to draft a minority report was simply added to the time already taken by the committee that would have led to further delays.

• (1830)

While delay appears to be an opposition objective, it is not a government objective. Government senators made it clear prior to putting the report to a vote that we do not believe this is the appropriate way to use committee observations — and, indeed, this is not the way that we have traditionally conducted ourselves. It is one thing to engage in partisan debate on the floor of the Senate, at the committee table or in front of the media; it is another, entirely, to use a report to extend that debate.

Senator Andreychuk has given notice of an inquiry concerning the inappropriate use of observations accompanying committee reports. I would suggest that all honourable senators pay attention to what she has to say.

The vote held at the end of the meeting records Senators Andreychuk, Nolin, Oliver and myself as opposed to the observations. Senators Day, Cowan, Baker, Joyal, Milne, Ringuette and Zimmer supported the observations. There were no abstentions.

Honourable senators, the President of the Treasury Board has stated that amendments to this bill will be judged on their merits, and it remains to be seen how many will be judged to be meritorious.

Rule 99 of the *Rules of the Senate* reads as follows:

> On every report of amendments to a bill made from a committee, the Senator presenting the report shall explain to the Senate the basis for and the effect of each amendment.

The rule says "shall." Although I am not a lawyer, I understand the word "shall" to mean mandatory.

[*Translation*]

In French it says:

> Dans tout rapport où un comité propose des amendements à un projet de loi, le sénateur qui présente le rapport doit expliquer au Sénat les raisons et la portée de chaque amendement.

[*English*]

I shall therefore commence the reading of the amendments.

Senator Murray: Dispense.

Senator Stratton: I was waiting for someone to say that. Remember that the rule says "shall" and "droit." I have no choice.

I shall go through the substantive amendments to Bill C-2 because I believe those are the ones that are important to this chamber, rather than the technical amendments. I am reading from a research document prepared by the Parliamentary Information and Research Service of the Library of Parliament.

The first paragraph reads:

> At lines 26-7, on page 5, Clause 2 was amended to provide for the proposed *Conflict of Interest Act* to cover potential and apparent conflicts of interest, in addition to the actual conflicts of interest already covered.
>
> At lines 12-17, on page 6, Clause 2 was amended to delete section 6(2) of the *Conflict of Interest Act*, because that subsection would have constrained public office holders who are Members of Parliament from debating or voting in certain circumstances.
>
> At line 7, on page 9, Clause 2 was amended to insert the words "close personal" to the phrase 'relative or friend', with the effect that public office holders would be permitted to receive gifts or other advantages only from relatives or close personal friends.

Originally, the clause said "friends," but the opposition added "close personal." What does "close personal friend" mean? Is a close personal friend a spouse, a brother, a cousin? Perhaps a close personal friend is a mistress. Would a mistress not be defined as a close personal friend, especially in relation to a minister?

> At line 37, on page 13, Clause 2 was amended to delete the words "and friends," with the effect that a reporting public office holder would be required to report all gifts that exceed $200 from one source other than those from relatives.
>
> At lines 1 and 22-27, on page 22, Clause 2 was amended to provide that an exemption from the post-employment rules in sections 35 and 36 of the *Conflict of Interest Act* may be granted on application by the former reporting public office holder, that the Commissioner must give written reasons for a decision to exempt a public office holder and publish all decisions to grant exemptions, and to delete section 38(3) of the *Conflict of Interest Act*, which would have limited the scope of judicial review of exemption decisions.
>
> At line 7, on page 24, Clause 2 was amended to amend section 43(1) to require the Commissioner to provide advice to the Prime Minister, rather than confidential advice, and to add a new subsection 43(2), with the effect that the Commissioner's advice to the Prime Minister may be provided on a confidential basis, unless the Commissioner concludes that a public office holder has contravened the *Conflict of Interest Act*. In the latter case, the Commissioner will be required to provide the Prime Minister and the concerned public office holder with a report, and to make the report public.

Think about that one.

> At lines 4-21, on page 25, Clause 2 was amended to delete subsections 44(5) and (6), which would have precluded members of the House of Commons and Senate who received information from the public about an alleged contravention of the *Conflict of Interest Act* from disclosing the information to anyone at certain points in the process,

and would have permitted the Commissioner to refer a failure to comply with that restriction to the Speaker of the Senate or House of Commons.

At line 37, on page 25, Clause 2 was amended to add a new section 44(8.1) to the *Conflict of Interest Act*, requiring that if the Commissioner determines that a request for an examination by the Commissioner was frivolous or vexatious, or made in bad faith, the Commissioner must report only to the concerned public office holder and the member who requested the examination, and not make the report public.

At line 16, on page 28, Clause 2 was amended to remove a reference to section 87 of the *Parliament of Canada Act*. Although in itself this amendment is technical, this was the first in a series of amendments the cumulative effect of which was to remove from the mandate of the Conflict of Interest and Ethics Commissioner responsibilities in respect of the Senate of Canada and to continue to vest these responsibilities in the Senate Ethics Officer.

You must remember that most of these were passed on division.

At lines 38 and 40, on page 31, Clause 2 was amended to change a limitation period provided for under the *Conflict of Interest Act*, such that proceedings in respect of a violation could be commenced within two years of the day on which the Commissioner became aware of the subject-matter, and not later than five years after the subject matter arose, instead of within five years after the day on which the Commissioner became aware of the subject matter.

I have already explained the reason for the five years. It is five years to investigate and 10 years to charge, and that is because of how far back these matters can go and how much time it takes to investigate them.

At lines 35 and 39, on page 32, Clause 2 was amended to change the general limitation period under the *Conflict of Interest Act*, to provide that proceedings under the Act may be taken within but not later that two years (instead of five) of the day on which the Commissioner became aware of the subject-matter, and not later than five years (instead of ten) after the day on which the subject-matter arose.

I have just explained that. Adscam started to become public in 2005. Think about the impact of limiting this to two years.

At lines 19-21, on page 44, Clause 26 was amended to add subsection (4) to section 20.5 of the *Parliament of Canada Act*, providing, for greater certainty, that the administration of the *Conflict of Interest Act* in respect of public office holders who are ministers or parliamentary secretaries is not part of the duties of the Senate Ethics Officer or the Senate committee.

After line 7, on page 48, Clause 28 was amended to add new section 86.1 to the *Parliament of Canada Act*, providing that the Conflict of Interest and Ethics Commissioner and staff are not compellable witnesses, nor do criminal or civil proceedings lie against the Commissioner or staff for anything done in good faith in the exercise of their duties under the Act.

• (1840)

Honourable senators, I could go on. There are quite a number of pages left in this document. However, with the permission of honourable senators, I would like to table these explanations so that they may be read by honourable senators before we move to third reading of the bill.

Hon. Lowell Murray: Is there an explanation on each one? The honourable senator is giving an explanation on each one.

The Hon. the Speaker: Honourable senators, Senator Stratton is requesting the consent of the house to table the explanation that he has in writing that he has been using so far, or he can continue to do it orally. What is the wish of the house?

Senator Comeau: We would agree to that.

Senator Murray: May I ask a question, Your Honour?

The Hon. the Speaker: Yes.

Senator Murray: The honourable senator, who, with one or two exceptions, simply read from a narrative explaining what the committee amendments are about. Do I understand that the narrative from which he is reading is authorized by the committee as a whole?

Senator Stratton: Rule 99 requires that an explanation for the amendments be given. The Library of Parliament supplied these explanations as a requirement of rule 99.

Senator Murray: Speaking as one senator, I would find it satisfactory if those explanations were tabled and became part of our record. The honourable senator is not, it seems to me, giving the government's position one way or the other on these amendments, except in one or two cases where he departed from the text.

If members of the committee are satisfied with that, I, for one, would not disagree to having the explanations form part of our record.

Senator Stratton: The explanation given does not set out either the government's position or the opposition's position; it explains the impact of the amendment. That is the extent of it. In other words, the explanation is gender neutral. My sidebars are another thing.

Hon. Joseph A. Day: Honourable senators, rule 99 indicates:

> ...the Senator presenting the report shall explain to the Senate the basis for and the effect of each amendment.

The basis for the amendment was given during the committee hearings. I assume that this report, which I have not seen yet, would have the basis that was given at the time that the amendment was proposed. If it does not, then it is not in conformity with rule 99.

In any event, this was a motion that I heard presented. It seems to me that if we could have an opportunity to defer voting on the motion until we have had an opportunity to review what my honourable colleague is proposing to table, we may be able to resolve the matter. I have not seen it yet.

Senator Stratton: I will withdraw the motion and keep reading.

Hon. Anne C. Cools: You cannot do that. You cannot just withdraw.

Senator Comeau: Why not?

Hon. Joan Fraser (Deputy Leader of the Opposition): Your Honour, I do not think Senator Stratton actually made a motion. He asked for leave to table a document. I was prepared to give leave because on the strength of what I had heard, indeed, what he was reading was not a representation of either the government side or the opposition view of these amendments.

I had, however, hoped to ask a question, which I suppose the honourable senator will now address because he will continue his remarks. I am particularly interested, as I suspect some of my colleagues are, in hearing the reasoning that the committee brought to bear on the question of one, two or three ethics commissioners or officers. I hope that is part of what we will be learning.

The Hon. the Speaker: Honourable senators, Senator Stratton asked leave to table a document. It is my understanding that leave has not been granted.

Therefore, Senator Stratton, you may continue with your presentation.

Senator Stratton: Thank you, Your Honour.

I will continue. The next amendments deal with election financing.

> After line 5, on page 58, Clause 44 was amended to add new subsection 404.2(7) to the *Canada Elections Act*, providing for greater certainty that fees paid for a political convention are contributions to the political party.
>
> On pages 58 and 59, Clause 46 was amended to increase the proposed contribution limits under section 405 of the *Canada Elections Act* to $2,000 in a calendar year to a political party, $2,000 in a calendar year to the registered associations, nomination contestants and candidates of a political party, $2,000 in a calendar year to a candidate who is not the candidate of a party, and $2,000 in a calendar year to a leadership contestant. The clause was also amended to increase the proposed amounts that candidates, nomination contestants and leadership contestants may make to their own campaigns from $1000 to $2000 without the amounts being treated as contributions. A further amendment provides that the contribution limits in the Act are multiplied by the number of elections held in the same calendar year, but only in respect of contributions to registered parties, nomination contestants, and candidates of registered parties.

That explanation of that particular amendment explains to honourable senators the basis for and the effects of the amendment as per rule 99. That explanation by the Library of Parliament does both. That is the intent of each one of these explanations; they are gender neutral.

> On page 64, at lines 31 and 34, Clause 59 was amended to change the limitation period for initiating prosecutions under the *Canada Elections Act* from not later than five years after the Commissioner of Canada Elections became aware of the facts and not later than ten years after the offence was committed, to not later than two years after the Commissioner became aware of the facts and not later than seven years after the offence was committed.

The next explanations refer to lobbying.

> On page 66, on line 13, Clause 67 was amended to replace the term "senior public office holder" with "designated public office holder" in the proposed *Lobbying Act*. This change in wording is intended to better respect the range and hierarchy of positions to be included under the definition of public office holder. Further consequential amendments replaced all references with the new term throughout the *Lobbying Act*. Also, on lines 18 and 19 on the same page, the definition of designated public office holder was amended to specifically exclude staffs of Commissions of Inquiry and parliamentary institutions.
>
> On page 74, on line 30, Clause 73 was amended to replace the word "may" with "shall," making mandatory the requirement in section 9.1(2) of the proposed *Lobbying Act* that the Commissioner of Lobbying, in an annual or special report, report on the failure by a present or former public office holder to respond to a request by the Commissioner under section 9.1(1) for confirmation of lobbying activities.

• (1850)

> On page 75, at line 21, Clause 75 was amended to ensure that the application of the five-year prohibition on lobbying for individuals employed by organizations. Instead of all former designated public office holders who are employed by organizations being subject to the ban, such an individual would be subject to the same test as that provided for in-house corporation lobbyists, that is, that he or she would be subject to the prohibition if carrying on lobbying activities would constitute a significant part of his or her work on the organization's behalf.
>
> On page 76, after line 8, Clause 75 was amended by adding a new section 10.111 to the *Lobbying Act*, which would prohibit any person who has a contract for services, or is employed by an entity that has a contract for services with the government from carrying on certain lobbying activities for a period of five years after the day on which the contract ends.
>
> On page 80, at lines 16-22, Clause 79 was amended by broadening the regulation-making authority granted to Governor in Council to designate designated public office holders. Such designations could be made if, in the opinion of Governor in Council, doing so is necessary for the purposes of the Act.

On page 80, after line 22, new Clause 79.1 was added to the bill, to prohibit obstructing the Commissioner of Lobbying and his or her staff in the performance of duties and functions under the *Lobbying Act*.

On page 81, at lines 7 and 10, Clause 80 was amended to change the limitation period for prosecutions under the *Lobbying Act* from not later than five years after the Commissioner became aware of the facts and not later than ten years after the offence was committed, to not later than two years after the Commissioner became aware of the facts and not later than five years after the offence was committed.

On page 81, after line 22, Clause 80 was amended to add a penalty provision providing that a person who fails to comply with a prohibition of the Commissioner is guilty of an offence and liable on summary conviction to a fine not exceeding $50,000.

On pages 85-86, Clause 89 was defeated. Clause 89 would have created a special exclusion in the *Access to Information Act* for records relating to investigations by the Commissioner of Lobbying. Note that Clause 144 of the bill was amended to add the Commissioner of Lobbying to the list of Officers of Parliament who will be required to refuse to disclose certain records relating to investigations under section 16.1 of the ATIA.

That is the Access to Information Act. I now move on to the rubric "Priority for Ministerial Staff."

On page 92, on lines 39 and 40, Clause 106 was amended to delete references to a special adviser to a deputy minister or deputy head, removing these types of officers from the proposed list of people under section 127.1(1)(*c*) of the *Public Service Employment Act* (PSEA) who can be appointed by Governor in Council. This change will preserve the status quo in terms of the appointment of such advisers.

On page 93, after line 16, Clause 107 was amended by adding new subsections (2) and (3) to Clause 107, creating an additional transitional regime for ministerial staff who earned priority status for appointment before the coming into force of clause 103 of the bill and who do not cease to be employed before the coming into force of clause 107, allowing them to maintain priority status when they cease to be employed, in accordance with sections 41(2) or (3) of the PSEA.

That is the Public Service Employment Act. The next paragraph deals with coming into force.

On page 94, at lines 1-4, Clause 108 was amended to provide that clauses 41 to 43, 44(3) and (4), 45 to 55, 57 and 60 to 64 come into force on 1st January of the year following the year in which the bill receives Royal Assent. Clause 108 affects the amendments to the *Canada Elections Act* and consequential amendments to the *Income Tax Act*, including the new political contribution limits and the ban on corporate and union contributions.

The following paragraph refers to the Auditor General

On page 95, at lines 5 and 6, Clause 110 was amended to delete the words "qualified auditor" from section 3(1) of the *Auditor General Act*. The section, as amended, would require Governor in Council to appoint an Auditor General of Canada in the manner specified in the section.

I come now to the Parliamentary Budget Officer.

On page 98, at line 3, Clause 116 was amended to delete the words "the estimates and" from proposed 79.2(*b*) of the *Parliament of Canada Act*. The Parliamentary Budget Officer's mandate with respect to the government's estimates was considered to be sufficiently spelled out in subsection (3) of the same section. Also on page 98, subsection (*d*) (lines 27 to 31) was deleted. The specific reference in that subsection to the costing of private members' bills was considered to be adequately covered by the mandate provided in subsection (*e*), which was re-numbered (*d*), which deals with costing of any proposal relating to a matter within Parliament's jurisdiction.

On page 97, at line 26, Clause 116 was amended to replace the word "may" with "shall," making it a mandatory requirement that Governor in Council select the Parliamentary Budget Officer in the manner specified in subsection 79.1(3) of the *Parliament of Canada Act*.

On page 97, at line 29, Clause 116 was amended to provide that the list of three names, provided for under subsection 79.1(3) and from which the Parliamentary Budget Officer is selected, is submitted through the Leaders of the Government in the Senate and the House of Commons (instead of through the Leader of the Government in the House of Commons alone).

On page 97, after line 30, Clause 116 was amended to prescribe who will be included in the committee to provide a list of candidates for the office of Parliamentary Budget Officer. The composition of the committee, which previously would have been determined by the Parliamentary Librarian, must include the Leaders of the Government and the Opposition in both the Senate and the House of Commons, and the Parliamentary Librarian.

On page 98, at line 47, Clause 116 was amended to add the words "free and timely" to section 79.3(1), to qualify the access to financial information which must be provided to the Parliamentary Budget Officer under the section.

The next paragraphs deal with the Director of Public Prosecutions.

On page 105, at lines 19 and 20, Clause 121 was amended to change the composition of the selection committee for the Director of Public Prosecutions, adding a representative from each recognized party in the Senate to the committee.

On page 105, at lines 27-34, Clause 121 was amended to provide that, instead of the Attorney General submitting ten names to the selection committee for consideration, the selection committee will identify candidates itself, and then

assess them and recommend three to the Attorney General. It may be noted that the Attorney General will still be indirectly involved in the initial selection of candidates, as there are two Deputy Ministers on the selection committee, as well as a person appointed by the Attorney General.

On page 105, at lines 41-42, Clause 121 was also amended to clarify that the parliamentary committee that considers the final candidate chosen by the Attorney General will be established by either or both Houses of Parliament. Consequential amendments referring to that committee were made on page 106, at lines 2 and 5.

On page 106, at line 13, Clause 121 was amended to provide that the Director of Public Prosecutions may be removed for cause with the support of not only a resolution of the House of Commons, but also of the Senate.

The following paragraphs refer to access to information.

On page 117, at line 40, Clause 143 was amended to add the word "timely," adding to the new duty to assist requesters created in section 4(2.1) of the *Access to Information Act* (ATIA) that government institutions provide timely access as required in the section.

On page 118, after line 14, Clause 144 was amended to add the Commissioner of Lobbying to the list of Officers of Parliament who will be required to refuse to disclose certain records relating to investigations under section 16.1 of the ATIA.

• (1900)

This amendment is consistent with the deletion of clause 89 of the bill, which would have created a separate exemption of the same effect for the commissioner of lobbying. It was defeated by the committee.

On page 118, at line 29, Clause 145 was amended to replace the word "shall" with "may," providing the Chief Electoral Officer with discretion in applying the section 16.3 exemption for certain records relating to investigations under the *Canada Elections Act*.

On page 119, at lines 24 and 25, Clause 147 was amended to add the Canada Foundation for Sustainable Development Technology to the list of entities provided under section 18.1 of the ATIA, permitting heads of government institutions to refuse to disclose certain documents belonging to and consistently treated as confidential by the listed entities.

On page 120, after line 10, Clause 148 was amended to add a new section 20.3 to the ATIA, to require the head of the Canada Foundation for Sustainable Development Technology to refuse to disclose certain records containing information relating to applications for funding, eligible projects or eligible recipients.

On page 120, before line 11, Clause 148 was amended to add a new section 20.4 to the ATIA, to require the head of the National Arts Centre Corporation to refuse to disclose certain records relating to the terms of contracts for the services of a performing artist or the identity of a donor.

On page 120, at line 37, Clause 150 was amended to add the words "or any related audit working paper" to proposed subsection 22.1(2) of the ATIA, adding that type of document to the exception it provides to the subsection 22.1(1) exemption for certain draft audit papers. The effect of the amendment to subsection 22.1(2) is to require disclosure of such audit working papers if the final audit report is not completed within two years.

On page 120, after line 41, Clause 150.1 was added to the bill, adding a new section 26.1 to the ATIA. This section would create a public interest override in the Act, permitting heads of government institutions to disclose documents, which would otherwise be exempt from disclosure, if disclosure is determined to be in the public interest, unless the information relates to national security.

On page 123, after line 14, Clause 159 was amended to add new sections 68.3 to 68.8 to the ATIA. The new sections would exclude from the application of the Act any documents held by five foundations and the offices of five Officers of Parliament before the coming into force of clause 166 of Bill C-2. The five foundations, all of which are added to the ATIA by the bill, are the Asia-Pacific Foundation of Canada, the Canada Foundation for Innovation, the Canada Foundation for Sustainable Development Technology, the Canada Millennium Scholarship Foundation and the Pierre Elliot Trudeau Foundation. The five Officers of Parliament, also added by the bill, are the Auditor General of Canada, the Chief Electoral Officer, the Commissioner of Official Languages, and the Information and Privacy Commissioners of Canada.

On page 126, Clause 165, which would have added the Canadian Wheat Board to the ATIA, was defeated.

On page 127, Clause 172.1, which would have added a provision requiring a Ministerial review of the appropriateness of the inclusion of the Canadian Wheat Board in the ATIA, was defeated.

On page 127, after line 31, new Clause 172.01 was added to the bill, adding the *Canada Elections Act* and section 540 of that Act to Schedule II of the ATIA. The effect of this inclusion would be to exclude from the ATIA certain election documents the release of which is restricted by section 540.

Under the rubric "Whistleblower Protection," are the following paragraphs:

On page 137, after line 27, Clause 194 was amended to amend the definition of "protected disclosure" under the *Public Servants Disclosure Protection Act* (PSDPA). The amended definition would include, in subsection 29(1)(d), disclosures made by a whistleblower who is lawfully permitted, or required as is already provided, to do so. The effect of the amendment is to broaden the circumstances in which disclosures will be allowed and covered by the PSDPA.

On page 137, after line 36, Clause 194 was amended by adding two new subsections to the section 2(1) definition of "reprisal." The effect of the amendment would be to expand that definition, which currently deals with measures related to working conditions, to include any other measure that may adversely affect the public servant, whether directly or indirectly, and threats to take any of the measures included in the new definition.

On page 138, after line 12, clause 194 was amended to change the definition of "public sector" in section 2(1) of the PSDPA, replacing the part of the definition after paragraph (c) with the explanation that "public sector" does not include the Canadian Forces, which would have the effect of including the Communications Security Establishment and the Canadian Security Intelligence Service, and excluding the Canadian Forces.

Remember, there are 300 clauses in this bill.

On page 140, before line 7, Clause 201 was amended to add new section 19.01 of the PSDPA, which creates a rebuttable presumption that administrative or disciplinary measures taken against a public servant who makes a protected disclosure are reprisals against that public servant.

On pages 140 and 141, Clause 201 was amended to extend the limitation periods prescribed under three subsections of the PSDPA from 60 days to one year.

On page 154, at lines 39 and 40, Clause 201 was amended to delete the limit on compensation for pain and suffering of a complainant, which had been set at $10,000.

On page 160, at lines 30 and 39, Clause 203 was amended to increase the maximum amounts payable to public servants for legal advice under subsections 25.1(4) and (5) of the PSDPA from $1,500 to $25,000, and under subsection (6), in exceptional circumstances, from $3,000 to an amount in the discretion of the Public Service Integrity Commissioner.

On page 162, after line 29, Clause 207 was amended to add new subsection 29(1.1), permitting the Commissioner, when he or she is of the opinion that it is necessary for the purpose of an investigation, to use the powers provided under section 29(1) to obtain information from outside the public service.

On page 171, at line 39, Clause 221 was amended to expand the class of records that must not be disclosed by the Public Service Integrity Commissioner under section 16.4 of the ATIA in order to further protect the identities of public servants who make disclosures or give evidence in an investigation under the PSDPA.

On page 172, at line 12, Clause 221 was amended to limit the exemption provided for under section 16.5 of the ATIA for records related to disclosures or investigations under the PSDPA to cases where the information could reveal the identity of a whistleblower or a witness, or where the investigation is not yet completed.

On page 174, at line 15, Clause 223 was amended to add to the exemption provided for under section 9(3) of the *Personal Information Protection and Electronic Documents Act* (PIPEDA) new subsection (e) covering records related to disclosures or investigations under the PSDPA to cases where the information could reveal the identity of a whistleblower or a witness. Accordingly, such documents would not have to be provided to an individual applying for access to personal information.

• (1910)

On page 174, at lines 20-28, Clause 224 was amended to replace section 22.2 of the *Privacy Act* with a new provision intended to protect the identity of disclosers under the PSDPA. Under the new section, the Public Sector Integrity Commissioner could not disclose personal information related to an investigation under the PSDPA that is requested under section 12(1) of the *Privacy Act* if it could identify a whistleblower or a witness, without the consent of that whistleblower or witness.

Under "Public Appointments Commission" are the following paragraphs:

On page 175, at line 32, Clause 227 was amended to replace the word "may" with "shall," making mandatory the requirement that Governor in Council establish a Public Appointments Commission.

On page 176, at line 38, Clause 227 was amended to add the words "or reappointed," with the effect that the consultation process provided for in section 1.1(2) will apply to reappointments as well as appointments to the Public Appointments Commission.

On pages 176 at lines 40 and 41, and 177, at lines 2 and 3, Clause 227 was amended to add a requirement that Senate representatives, as well as their counterparts in the House of Commons, be consulted on appointments to the Public Appointments Commission, and receive announcements of appointments as well.

On page 176, at line 32, Clause 227 was amended to add to subsection 1.1(1)(f) a requirement that public education and training be provided to appointees, as well as public servants, under that subsection.

On page 177, at line 5, Clause 227 was amended to extend the maximum term of office of members of the Commission from five to seven years. As provided, members may be reappointed for a further term or terms.

Under "Directors' Terms", the document states:

On page 181, after line 30, Clauses 244.1 and 244.2 were added to the bill, two add provisions to the *Canadian Tourism Commission Act* providing that directors appointed under sections 11(4) and 12(3) of that Act hold office on a part-time basis for a term not exceeding four years.

And finally under "Audit and Procurement" are the following comments:

> On page 187, after line 12, Clause 259 was amended to add new section 16.21 to the *Financial Administration Act*, permitting the Governor in Council with the legal authority to appoint external members of audit committees. Such external members would hold office during pleasure for up to four years, renewable for one additional term, and shall be paid remuneration and expenses fixed by the Governor in Council.

Here is a surprise. We jump from 259 to 306.

> On page 203, at line 4, Clause 306 was amended to change the word "may" to "shall," making mandatory the requirement that Governor in Council appoint a Procurement Auditor.
>
> On page 204, at line 22, Clause 306 was amended to replace the words "may not" with "may," making it possible for the Procurement Auditor to recommend the cancellation of a contract to which a complaint under section 22.1(3) of the *Department of Public Works and Government Services Act* relates.
>
> On pages 203 and 204, Clause 306 was amended to replace the words "Procurement Auditor" with the expression "Procurement Ombudsman" wherever they occur and with whatever modifications are necessary.
>
> On page 204, at lines 41 to 43, Clause 306 was amended to delete the phrase "including the departments in respect of which those duties shall not be performed." The deleted words would have made it possible to remove one or more departments from the purview of the Procurement Auditor (renamed Procurement Ombudsman).

Senator Murray: On a point of order. We have before us the report on a bill. Will the honourable senator move adoption of the report?

Senator Stratton: I so move, seconded by the Honourable Senator Comeau, that the fourth report of the committee be adopted.

The Hon. the Speaker: Honourable senators, it has been moved by the Honourable Senator Stratton, seconded by the Honourable Senator Comeau, that the fourth report of the Standing Senate Committee on Legal and Constitutional Affairs, Bill C-2, providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability, with amendments and observations be adopted.

Shall this report be adopted?

Senator Murray: Your Honour, on the point of order again.

The Hon. the Speaker: I just put a question to the house. The question that I put to the house was a motion by Senator Stratton, seconded by Senator Comeau, and that motion is debatable.

Senator Murray: With the greatest respect, the only motion that is in order is a motion to adopt the report. The observations are no part of the report. We have been through this many times before. The observations are a narrative that has been put out by the committee, a majority thereof. That does not matter. I do not think we are asked or should be asked to adopt the observations. With respect, the only motion that is in order is to adopt the report, the proposed amendments of the committee.

The Hon. the Speaker: I understand what the honourable senator is saying. The chair has the fourth report, and on page 31 of that report is a page that begins with the heading, "Observations to the Fourth Report..." Let us have a discussion on this, honourable senators.

Senator Day: It is our contention that the report from the committee comprises the reported-back list of amendments to the bill plus the attached observations.

The Hon. the Speaker: I think that Senator Murray, once again, is right. Those observations follow the signature of Senator Donald Oliver, who is the chair. What lies before the chairman's signature is the official report.

With that, Senator Stratton's motion, seconded by Honourable Senator Comeau, is to adopt the report signed by Senator Oliver. Vis-à-vis the document that was circulated, we go from the beginning to page 30.

Are honourable senators ready for the question? Debate.

[*Translation*]

Senator Day: Honourable senators, after hearing nearly 100 hours of testimony from over 150 witnesses, I am pleased to join in the debate this evening at the report stage of Bill C-2, the proposed federal accountability act.

[*English*]

Honourable senators, I should like to join with Senator Stratton in thanking all members, on both sides of the house, of the Standing Senate Committee on Legal and Constitutional Affairs for their hard work and dedication to this enormous job. As well, I would like to thank Senator Stratton for taking the time to explain to us the amendments that form part of this report.

• (1920)

I join with him in thanking the team of legal draftspersons, led by Michel Patrice, our parliamentary counsel, for the tremendous support they provided in drafting the amendments and in attending the clause-by-clause consideration to provide legal advice.

The clerk team, led by Gérald Lafrenière, deserves special mention for the tremendous work they performed. We heard our last witnesses on Monday and reported back to the Senate, having done clause-by-clause study, on Thursday.

Honourable senators will understand the tremendous work done by all the staff and the tremendous dedication of all members of the committee who so willingly put aside other responsibilities and engagements for the overall good. The Senate can be proud of the work performed by this committee on Bill C-2.

I would like to provide honourable senators with a general overview of the committee's work on Bill C-2. I will not go into each of the amendments, as Senator Stratton has just done that. I will, however, mention some of the amendments before you.

As we have been reminded on so many occasions, the federal accountability act represents the Conservative government's first piece of legislation following the January election. The bill was drafted in just six weeks. It refers to nearly 100 statutes, amends 45 statutes and creates two new statutes. There are 214 pages in Bill C-2, and it includes 317 clauses. It proposes to make major amendments to a number of acts. I will list some of them to give you a feeling of the breadth of this bill. They include the Conflict of Interest Act, the Parliament of Canada Act, the Canada Elections Act, the Lobbyists Registration Act, the Public Service Employment Act, the Access to Information Act, the Public Servants Disclosure Protection Act, the Financial Administration Act and the Auditor General's Act, to name only a few.

In the other place, second reading debate on Bill C-2 began on April 25 of this year and ended on April 27. Following second reading, the bill was referred to the House of Commons Legislative Committee on Bill C-2. The committee held 28 meetings over 61 hours, hearing from nearly 70 witnesses between May 3 and June 6. These marathon-like conditions were heavily criticized by some members of the committee who felt they were not given ample time to digest the testimony. Furthermore, witnesses in the other place were given very little time to present their positions, some less than five minutes. As a result, we were informed that some potential witnesses refused to attend the process.

Such limitations on the review of a bill in the other place gave the Senate and the people of Canada cause for great concern. The complexity of this legislation and the breadth of impact this bill would have upon receiving Royal Assent necessitated thorough and thoughtful study. It was for us in the Senate to provide that thorough and thoughtful study.

The following words, delivered by Arthur Kroeger during his appearance before the legislative committee, support the actions of our committee:

> There are some things that a more experienced government probably wouldn't have done. In putting your heads together on this committee, I hope you'll be able to sort those out and arrive at improvements. It's a good bill, and I think you have the opportunity to make it better.

Our chairperson, the Honourable Senator Oliver, seemed to echo the words of Arthur Kroeger in his own second reading speech. He said:

> It is my hope, honourable senators, that once this bill is referred to committee we can take the time necessary, at an early date, to hear the necessary witnesses, to conduct our due diligence and to ensure that this extremely important piece of government legislation is properly scrutinized.

Honourable senators, I am pleased to report that, despite extraordinary pressure from the government, despite their unfavourable comments regarding the role of the Senate, and despite false allegations of stall and delay, our committee completed a much more thorough study of the government's federal accountability act than the hastily completed study that took place in the other place.

As a committee, we attempted to hear from each and every interest group and individual stakeholder who requested an appearance before our committee, many of whom complained that they were not given adequate time, if any time at all, or had not even been consulted by the other place.

I was very pleased on September 26 to hear the statement of the Honourable Leader of the Government in the Senate in this chamber, which highlighted the role of the Senate and the importance of our role as legislators. She said:

> We take our responsibility as legislators seriously. If we did a better job in this place and in the House of Commons to ensure that our laws are constitutional, it perhaps would eliminate the necessity for having groups challenge laws before the courts.

Honourable senators, I agree with the Honourable Senator LeBreton wholeheartedly. It is our responsibility to ensure that legislation becomes law only after it has been studied in a non-partisan and thorough manner. Political gamesmanship should not stand in the way of strong legislative review, and it is my sincere hope that the Leader of the Government in the Senate will urge her cabinet colleagues to stop belittling the valuable role of the Senate for short-term political gain.

In an article published in the *Ottawa Citizen* on October 21 of this year, just two days before the President of the Treasury Board, the Honourable John Baird, appeared before our committee, Mr. Baird himself warned Canadians, in an op-editorial page article that he wrote that "Canadians should be prepared for the Liberal-dominated Senate to dream up further ways to stall accountability."

The honourable minister continued by saying that "delay tactics, such as dozens of irrelevant amendments, should be expected."

That was written two days before he appeared before our committee.

On behalf of the senators on the committee who gave up so much of their last few months to ensure that this bill was given the attention it deserves, I would like to make it clear that the accusations of delay and stalling tactics are completely unfounded. If it were not for the responsible study of Bill C-2 that took place in the Legal and Constitutional Affairs Committee of the Senate, the government would not have had the opportunity to put forth 47 amendments of their own to a bill that Minister Baird earlier claimed had been examined under a microscope by his colleagues in the other place.

Frivolous and irrelevant amendments? I think not, honourable senators.

Before I continue, I would like to make it clear that the notion of true accountability and transparency in government is of the utmost importance. The federal accountability act has noble intentions and includes some very useful tools that will strengthen Canada's reputation as a stable and trustworthy nation.

• (1930)

Too often, a statement about the need for accountability and transparency is used in newspaper articles and press conferences to suggest that Canada's political system is broken, that it is corrupt or that those of us who walk the halls of these great buildings are dishonest. Honourable senators, this trend must come to an end. One must not use transparency and accountability lightly. They are powerful words when used responsibly, but they lose their value when used as a political football.

David Hutton, Coordinator of the Federal Accountability Initiative for Reform, described the bill as deeply flawed. He complained that the bill is "complex and it is full of loopholes when you dig into it." Mr. Hutton continued by explaining:

> I feel that the committees have been given an impossible task, namely, trying to turn this into effective legislation that meets intent.

Although it is disappointing that the government has resorted to such a flawed process to craft this legislative response to calls for greater accountability, Bill C-2 demonstrates how wise our Fathers of Confederation were when they created this chamber of sober second thought to look for the sometimes unintended consequences of proposed legislation and, as is stated in our observations, to let the intercession of time and reflection play its role in helping attain good order and government for all Canadians.

Our first challenge in the monumental task of studying Bill C-2 was deciding how to organize ourselves efficiently. Due to the size of the legislation, it was decided to ask senators to concentrate on specific areas of interest instead of asking each member on the committee to try to gain an in-depth knowledge of the entire bill. Permit me to review briefly each of the subject matter areas of the bill.

Although this bill is divided into five parts, the subject matter approach does not directly follow the five parts of the bill. The subject matter areas are ethics and conflict of interest. Senator Joyal led the questioning in that regard. Senator Zimmer led the questions in regard to political financing. With regard to lobbying, Senator Campbell led the questioning. With regard to access to information, Senator Milne led the questioning. I led the questioning with regard to the parliamentary budget officer. Senator Cowan led the questioning concerning whistle-blower legislation, as well as audit powers. With regard to the office of the director of public prosecution, Senator Baker led the questioning. Senator Mitchell led the questioning with regard to procurement. Senator Milne led the questioning with regard to public appointments. Concerning retroactive and retrospective application of the law and priority status, I led the questioning.

Honourable senators can see the breadth of subject matter that is being dealt with in this piece of legislation.

Over the next short while I will provide an overview of these various areas that have been dealt with. Each of these senators will in turn, I expect, be speaking with respect to their particular area of subject matter and providing a more in-depth analysis of the amendments that took place in relation thereto.

First, the Honourable Senator Joyal was the lead questioner on the part of Bill C-2 which covers conflict of interest and ethics issues for parliamentarians and senior government officials. The bill proposes a stand-alone statute, namely, the conflict of interest act. This new act would set out the duties, powers and responsibilities of the new conflict of interest and ethics commissioner insofar as ministers, their staff and public office-holders are concerned. The conflict of interest act would include a code of conduct that these individuals would be required to follow.

A major change proposed in Bill C-2 is the merging of the two current ethics positions, the Senate Ethics Officer and the Ethics Commissioner, into one so that the new conflict of interest and ethics commissioner would have jurisdiction over all members of the House of Commons, the Senate and senior public office-holders.

As Senator Joyal will confirm in the coming days, the committee heard no convincing evidence to support this move to decrease the number of ethics officers from two to one. Placing into the hands of a single commissioner the responsibility for overseeing three codes, all the members of the Senate and the House of Commons, as well as thousands of public office-holders, and then making him or her accountable to three separate and constitutionally independent authorities will not increase accountability. Consequently, our committee recommended that Bill C-2 be amended to keep in place the existing system insofar as a Senate Ethics Officer is concerned.

Some Hon. Senators: Hear, hear!

Senator Day: Honourable senators, we heard from many witnesses who suggested there should be three regimes, one for the Senate, one for the House of Commons and one for senior public office-holders. We opted not to go that far, although in our observations we pointed out that, namely, we did hear convincing evidence in that regard from many witnesses. We felt any decision in that respect should be made by those who would be affected by that decision.

We also heard that there should be a preamble like there was in the Prime Minister's code since Mr. Mulroney's days. However, it was dropped when the code was taken from being a non-statutory code to being a statutory code. Many indicated that general principles are important in legislation dealing with ethics.

We also amended the definition of conflict of interest to take it back to where it had been previously to include potential and apparent conflict of interest, as well as simply actual conflicts of interest.

The Honourable Senator Zimmer acted as the committee's lead on the proposed changes to the political financing legislation. The changes contained in Bill C-2 were described by Minister Baird as building on major reforms that were put in place in Bill C-24 by the government of Prime Minister Chrétien in 2003.

Bill C-24 was the most significant reform of political financing since the Election Expenses Act of 1974 and consequently contained a clause that called for the House of Commons committee to conduct a review to consider effects of the provisions of this act concerning political financing. It was so significant a change there was a built-in review mechanism. According to section 63(1) of Bill C-24, that review would take place after the Chief Electoral Officer submitted his report to the House of Commons following the first general election held under the new financing rules.

The first part of the report was tabled by Mr. Kingsley in September 2005. He said that he would present a second report that would deal with political financing reforms. However, instead of waiting for Mr. Kingsley's report on political financing and having an objective and methodical review of new financing laws by the House of Commons, including the $5,000 limit as required by Bill C-24, the Conservative government decided to bring forward major new changes to those same financing laws in this bill without any review whatsoever.

• (1940)

To now proceed with further significant changes without having the benefit of that review does not appear to be the most rational way of dealing with such a critical element of our democratic electoral process. The government has failed to produce any evidence whatsoever that the existing limits are somehow undermining the political process.

Furthermore, the political financing legislation in Bill C-2 was drafted by a government that is confused about the current rules regarding convention fees and their inclusion in political donation limits.

As a result of the testimony presented to the committee, we made recommendations for change. We stated in our observations that we felt it was not wise to move from the $5,000 limit until we had more objective information. However, the government made a decision to move, and we stated that move was based on incorrect information.

We had two options. We could say convention fees should be an exception and should not be included and that we would draft an exception for it. In our view, that exception created a black hole for funds to be put in and never reported. We opted for full and complete disclosure, and we said the convention fees should be included.

Therefore, when we took into consideration approximately $1,000 for convention fees in a year, we increased the figure to $2,000. In other words, we agreed to follow the government's lead and move the $5,000 down to $2,000. We accepted the separation of part of the funds going to the national party and part of the funds to the local riding association. We thought it was a good idea and it would help foster the viability of the local riding associations.

I fully expect when Mr. Baird and his group have an opportunity to review the amendments, they will accept our amendments, this bill will receive Royal Assent and will be brought into force, and this clause with respect to political financing will come into force on January 1, 2007.

We made no change on corporate and union donations. We heard compelling evidence that this provision may well not stand the scrutiny of a court challenge.

A point raised was more than one leadership convention in a year, and we handled that issue. We heard from many small political parties. I think this issue is important for us to appreciate.

Small political parties say for a $20 limit and anything over — they pass the hat at a meeting — they must file a report. These small parties say it is too onerous for them, and it is counterproductive. We decided not to make a change but we made strong recommendations in that regard.

We did not change the decision that the Chief Electoral Officer appoints the returning officer in each of the electoral districts. We thought that was a good advancement and a good provision in this legislation.

With respect to lobbying, the committee's study of the proposed changes to the Lobbyists Registration Act was led by Senator Campbell, who will give a detailed overview of the committee's amendments in the coming days.

It is my intention to provide honourable senators with a synopsis of the main themes of this lobbying area, which were presented to the committee by those who will be directly influenced by the proposed changes to the lobbying legislation.

Our committee heard testimony from witnesses across the political spectrum regarding the proposed five-year ban on engaging in lobbyist activities for former ministers, ministerial staff and certain senior public servants. The common refrain was that the five-year ban is excessive and unwarranted. It will have the effect of depriving the government of the services of capable and qualified Canadians who will not wish to face such a ban after they leave public service.

We were moved by that testimony, but we did not amend the legislation. Again, honourable senators, we made a strong observation to the government in that regard.

We told Minister Baird that we would do just that; namely, we would not rewrite this act entirely, making as many amendments as we thought should be made. We would make those amendments that we thought must be made, and we made strong observations that form part of our report, which Minister Baird, the President of the Treasury Board, agreed to give close consideration to, as well as the amendments.

Similar to the reservations I expressed with regard to the Conservative government's failure to follow through with the legislative review of Bill C-24, political financing, before taking action, Parliament has not yet reached the time for the planned five-year review of the Lobbyists Registration Act before the changes proposed in Bill C-2 were brought forward.

The committee heard repeatedly that the real problem with respect to the lobbying industry did not arise from defects in the law as the law currently exists, but from individuals and organizations that do not comply with the law — unregistered

lobbyists. We wanted to understand better why large organizations such as the National Citizens Coalition, who relentlessly advocate initiatives seen as lobbying by most every Canadian, are not registered as lobbyists under the act.

Some Hon. Senators: Hear, hear!

Senator Day: We regret that the National Citizens Coalition did not accept an invitation to appear before us. We also regret that Bill C-2 does not address this problem.

We feel a five-year cooling off period is excessive. If you look at the Conflict of Interest Act at the front end of Bill C-2, you will find that former cabinet ministers have a two-year ban in representing companies and organizations before the government after they retire, with the possibility of getting an exception.

If you go to another part of Bill C-2, the Lobbyists Registration Act, there is a five-year ban for the same individuals as well. That inconsistency illustrates Bill C-2 was put together by different teams, and inconsistencies are found throughout.

Concerns about non-registered lobbyists must be addressed, but these concerns are not addressed in this bill. Not-for-profit organizations, the smaller organizations that are the backbone of our communities, express concern about the heavy filing requirements, but that concern is not addressed in this bill. We felt we could not create two standards, so we made a comment in our observations.

The most interesting part of the study in this area, honourable senators, is a preamble that states lobbying is a legitimate activity. There are references throughout to lobbying, but there is no definition for "lobbying." It may be that if there were a definition for "lobbying," even though it might be difficult to define, it would help catch some of the loopholes that are now obviously in this legislation.

• (1950)

It is safe to say, honourable senators, that access to information was the most difficult part of Bill C-2 for us to deal with — both to properly understand, and then attempt to fix, the amendments to the Access to Information Act and the Privacy Act, and the relationship between those two acts. Honourable Senator Lorna Milne was burdened with the task of leading our committee through this mystifying piece of legislation, and I look forward to her speech on this subject in the coming days.

The provisions of the Access to Information Act are scattered throughout the bill. Exceptions have been crafted upon exceptions, and there is a strangely divergent treatment of apparently similar information, depending on where it is held in the government.

Much has been made of the Conservative government's attempt to legislate a more open and transparent public service; however, witness after witness appeared before our committee presenting views that suggested otherwise. On September 21, Jennifer Stoddart, the Privacy Commissioner of Canada, was before the committee and said the following — and I quote:

> While I fully support the underlying goals of greater accountability and transparency, I am concerned about the impact Bill C-2 will have specifically in respect of some major Crown corporations which, in my view, goes directly against the intended objective of the bill.
>
> Remember Bill C-2 is about transparency. It also modifies part of the Privacy Act, and, ironically, it has the effect of diminishing the transparency in some of the Crown corporations....

Jennifer Stoddart told us that she, as our Privacy Commissioner, was not consulted on this proposed legislation before it was presented.

Some Hon. Senators: Shame!

Senator Day: Instead of introducing a package of amendments to the Access to Information Act that was promised by the Conservative government during the last election, the current government tabled a discussion paper on reform in the act. We appreciate the need for careful study of legislative proposals, and we are pleased that this government is prepared, at least in the matter of the Access to Information Act, to give Parliament the time it needs to study a proposal. We hope, however, the government will not use this study as an excuse to delay unduly the introduction of a full package of necessary amendments to the Access to Information Act.

In testimony before the committee on September 20, Alan Leadbeater, the Deputy Information Commissioner that administers the Access to Information Act, clearly expressed his concern with the proposed legislation in Bill C-2:

> All I can say is that we are begging this committee not to allow these provisions related to access to information to become the law of this land.

As a result of that compelling testimony presented to the committee, the following observations and amendments were made.

The Office of the Information Commissioner of Canada does not want us to proceed, but we felt that the fact that the amendments in Bill C-2 were expanding the base to bring in Crown corporations and other government institutions was worthwhile, and that should not be abandoned. We recognized, however, that some of those other institutions that were being brought in needed special consideration — for example, the National Arts Centre — because they wanted to be able to protect the names of their donors. There are other organizations, like Export Development Canada and Sustainable Development Technology Canada, which deal with intellectual property rights of their applicants, and there have to be provisions to protect those special rights.

We ensured that there should not be retroactivity. My honourable colleague made mention of this and he asked why. The short answer is that retroactivity is not desirable and it is not necessary. The new organizations that are being brought in under this umbrella of access to information said that they will set up their systems, that they will follow the systems that they set up and that they are quite content, as long as certain areas of

protection are built into the system, to be under the legislation. However, for anything they have done in the past, they did not have those systems in place. They did not know that potentially their files might be open, under the Access to Information Act, to potential competitors, to people that would be interested in the intellectual property rights or the donors' lists. We said that retroactivity should not apply and that it would be unfair if it did.

We did, however, provide for two overriding principles. One is the injury test, the individual injury test. The commissioner should have the right to determine, for example: "I am inclined to put this information out, but there may be some injury to the individual or the organization and therefore I will not." The second overriding test — and both of these were recommended by many witnesses — is the public interest override. The inclination is to keep the information confidential, but there is a greater public interest in letting the information out there. Both of those discretionary tests are in there.

The next heading, honourable senators, is "Whistleblower Protection." At the outset, I feel it is important to note that the Public Servants Disclosure Protection Act prepared by the previous government was passed by the last Parliament on November 25, 2005, immediately before the dissolution of Parliament. Almost a year has passed since then, yet the current government has refused to proclaim that act into force — the existing act that has been passed.

Some Hon. Senators: Shame!

Senator Day: As a result, the protection to the public servants that was created under that legislation has been held hostage. Those rights, that protection, has been held hostage for political gain.

Joanna Gualtieri, who is the Director of the Federal Accountability Initiative for Reform and one of the most prominent, determined and passionate advocates for whistle-blower protection in Canadian history, told our committee:

> ...I have reflected on the fact that it has been said that the senators really must pass this bill because if they do not, they will be seen to be turning their backs on accountability. We genuinely believe that the Senate's finest hour will be found in being proponents of accountability. That will be done by getting back to the drawing board and doing this right. We have waited a long time for whistle-blowing protection.

Senator Stratton: Thirteen years.

Senator Day: She continues:

> The public service and Canadians are dependent on you to implement this correctly.

Honourable senators, before you have an opportunity to hear from our lead, Senator Cowan — I think that might have been Senator Campbell — please allow me to give you a brief overview of the amendments proposed by our committee. What we were looking for was balancing what we feared could be the heavy hand of the public service against the individual whistle-blower — or, as Senator Campbell said, "the information patriot" — that is, the individual who is prepared to stand up and point out what is wrong.

We looked for ways we could rebalance this. Specifically, if within a year a reprisal is alleged by the whistle-blower, and there appears to have been something transpire, then the onus would be reversed and it would be up to the employer, the public service, to prove that it was not reprisal that had resulted in the individual's suffering.

There was a 60-day limitation period for bringing a reprisal to the attention of the government if an individual felt a reprisal action was being taken against him or her. I repeat — 60 days. Honourable senators can understand how quickly 60 days could pass in a workplace environment. An employee would not know if his or her boss might just be having a bad day or a bad week — 60 days can happen very quickly. We changed that to one year.

There was provision for legal assistance.

• (2000)

The legal assistance, said the commissioner, has the discretion to allow someone to bring forward information. A figure of $1,500 in total could be made available for legal fees. We changed that to say that Treasury Board guidelines should apply not only to the individual who is still in the government, but to others as well. That is $25,000 up from $1,500.

Turning to the subject of the public appointments commission. Clause 227 of this bill amends the Salaries Act to allow for the establishment of a public appointments commission — that is where you find it, in the Salaries Act — by the Governor in Council. The commission is to consist of a chairperson and not more than four members who can hold office for five years and may be reappointed for further five-year terms.

The public appointments commission does not look after appointments. The public appointments commission is a body that ensures that each minister in each department has set up an appointment process that is fair. It is important for us to understand that particular function.

It is provided that this commission will develop an appointment practice code. The committee urges the government to make this code public as soon as it has been prepared. That code will be available to each of the ministries, and each of the ministries will be tested against that code. We would like to see the code. It would be helpful.

As this concept had received so much comment, we changed the provision from saying that the Governor in Council "may" establish this public appointments commission to "shall" establish this appointments commission.

Honourable senators, of all the areas, the director of public prosecutions was the one in which the evidence that came forward surprised me the most. I went into this wondering: Why? What is wrong with our system? I felt that the result of this inquiry would likely have been to suggest it was unnecessary and we should not be doing it.

However, we heard from several witnesses who said that this cannot be that serious. I will mention their names in a moment. First, let me mention what Arthur Kroeger said on June 28:

> I am not clear as to what problem it intends to solve. You have a Deputy Minister of Justice; you have an Assistant Deputy Minister, whose function is prosecutions. Virtually all prosecution is handled under the Criminal Code and administered by the provinces. I am puzzled as to why the position was necessary.

To add to our committee's doubt of the position's necessity, the Minister of Justice admitted that there is no problem with the prosecutorial independence at the federal level. He testified:

> The men and women who constitute the Federal Prosecution Service have been faithful guardians of prosecutorial independence. We are not here to correct a problem that has already occurred; we are here to prevent problems from arising in the future.

Despite the committee's concerns, we recognize that this policy was an important part of the Conservative Party's election platform, and we were reluctant to reject it.

Furthermore, testimony from former Chief Justice Antonio Lamer outlined that we had been living without a director of public prosecutions at the federal level since Confederation. Nevertheless, he suggested that the system cannot have too many eyes giving a second look to a proposed prosecution.

As the committee has outlined in its report, we were concerned to see the proposed appointment process for the new director of public prosecutions. That was our major concern, honourable senators. If we are going ahead with this concept, we are replacing the merit position within the Department of Justice. The new director is chosen from a group of 10 who are proposed by the Minister of Justice, the Attorney General. In other words, there is the possibility, honourable senators, under the proposal for interference at a partisan level. We took out that aspect in our amendment to provide that an independent committee will provide three names to the Attorney General, and the Attorney General will then choose one of those three names.

Honourable senators, in conclusion, the question one should ask is: Do we have a perfect bill now that we have proposed these amendments? The answer is: No, we do not. That is why I cannot stress enough the importance of the committee's observations. There remains much work to be done, honourable senators, on a number of statutes in an effort to improve openness and transparency.

With the amendments we have made and the government action recommended —

The Hon. the Speaker: Honourable senators, Senator Day is almost finished, as he has indicated. We had to go over a little bit with Senator Stratton. I recommend either we follow the rule or — did Senator Comeau want to say something?

Senator Comeau: I heard His Honour say that Senator Day is almost finished, so I imagine that means a couple of minutes.

Senator Day: Two minutes.

Senator Comeau: Two minutes is fine. We will accept two minutes.

Senator Day: Honourable senators, with the amendments we have made and the government action recommended in our observations, we see this as a good first step towards a more accountable federal government. Many millions of dollars were spent on the Gomery Commission, and I feel that his 19 recommendations deserve more attention than what has been afforded in Bill C-2.

If the proposed legislation is intended to prevent another ad-scam, as John Gomery said in a CBC interview, it is beyond comprehension why the Conservative bill ignores virtually all of the recommendations of his inquiry.

There are some steps that will require further vigilance of this chamber and the House of Commons: Proper funding for the various commissions being created, like the Parliamentary Budget Officer; scrutiny of the many regulations that need to be developed so that we really understand where this legislation is going; and the review currently underway in the House of Commons with respect to the Access to Information Act.

We should continue to urge action on Mr. Justice Gomery's main recommendations that parliamentarians and parliamentary committees be given adequate funding to use the information currently available to them and the more information that will become available to them with all the new agents of Parliament being created under Bill C-2. All of this information is to be used for the purpose of holding the government to account and, further, to use these resources here in the Senate to perform the valuable role that Bill C-2 has helped us to illustrate — that role of improving legislation sent to us by the House of Commons.

That is what your committee has done, honourable senators, and we respectfully request your support of our amendments to this bill.

• (2010)

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, I have been a member of the Standing Senate Committee on Legal and Constitutional Affairs for 13 years and I believe that we are in a unique position today.

The work carried out by the committee has certainly been remarkable. It has heard over 150 witnesses during over more than 30 working sessions. This work resulted in the committee deciding to make over 150 amendments to the bill, bearing in mind that approximately one third of these amendments were technical amendments proposed by lawyers for the government and, specifically, the Treasury Board Secretariat.

Some of the amendments were adopted unanimously, as we agreed that the bill had some major problems that had to be addressed.

Nevertheless, honourable senators, we are not the government. And for those who wish to form the government, they can do so, but in the other place. I realize that the majority of my colleagues

are Liberals, and unfortunately, some of them in committee could not resist that temptation, which I know is often very strong, having experienced this situation myself in 1993, 1994 and 1995, when the majority in the Senate was Conservative, although the government was Liberal.

I would remind honourable senators on the committee that, when the Senior Counsel of the Treasury Board Secretariat, Mr. Wild, appeared as a witness during clause-by-clause consideration of the bill, every time we asked Mr. Wild a question, he always began his responses by saying, "This represents a major shift in policy, which is why the government chose that direction. The proposed amendment goes against this policy."

Honourable senators, we are the Senate of Canada. Senator Day referred earlier to the intentions of the Fathers of Confederation, as they envisioned the Senate. I do not believe they thought the Senate would replace the government. I believe they envisioned the Senate as having a duty of restraint with respect to government action. It is very tempting, especially in a majority situation. However, having a majority also means an obligation to return to first principles to try to understand how to use this majority.

This is why I decided to rise this evening to face my colleagues who were sitting around the committee table when we studied the bill clause by clause and tell them that I do not think they acted in a manner that respected the intention of the Fathers of Confederation.

We must apply this duty of restraint when the government's policies — even when there is a minority government in the other place — are clearly identified by those to whom is entrusted the responsibility of advising the government as impartially as possible when we ask them to appear before us and inform us of that intention.

Honourable senators, I would like to give you two examples, just as I did the evening we received the comment book from our Liberal committee colleagues. For the Senate's benefit, I would like to review two examples that I believe illustrate the extent of this chamber's power.

The first example relates to the act introduced by Mr. Chrétien's government in 1994 to cancel the Toronto airport renovation contracts. The second relates to the bill, not yet passed, respecting animal cruelty.

These two examples show that, in exercising its governmental power, its policies, and its political will, the government acted against the rule of law in the case of the Toronto airport and against Canadian jurisprudence in the case of the animal cruelty bill.

In both cases, your Standing Senate Committee on Legal and Constitutional Affairs convinced itself that the only option was to block the adoption of these two measures, so it opposed them because, at that time, it determined it should abandon its duty of restraint and inform the Parliament that the government's action was illegal. In both cases, your committee did as it should have done.

I was present during those reviews and, each time, we tried either to make amendments or to convince the government's representatives that their measures should be amended so they themselves could propose such amendments. In both cases, no amendments were made and, in both cases, the Senate took it upon itself to ignore the duty of restraint and either force an amendment to remove the political element or simply reject the legislation.

Every time Mr. Wild told the committee, "This is a major policy change," this should have raised a red flag in everyone's mind. Most of my colleagues in committee did not notice this red flag; that is why I decided to speak to you this evening to explain that exercising political power in the Senate involves a duty of restraint and, although our powers are somewhat similar to those of the House of Commons, we cannot pretend to be a chamber that can jeopardize a government's policies.

It is tempting to do so when one has a majority, but that is not our role. The political governance of Canada takes place in the other chamber. Our role is to ensure that the government, in its actions, respects our fundamental laws, the Constitution, the Charter, and Canadian jurisprudence. It is not the role of the Senate to govern. Unfortunately, honourable senators, what your committee proposed is just that.

Your majority in committee, not satisfied with acting on its desire to govern and to amend the bill, felt authorized to introduce observations and to table a 60-page document of observations. For those of you who end up reading it, you will find some very fine political discourse, but it has no place in the Senate.

I will draw your attention to part of this text.

• (2020)

The second-last paragraph, on page 658 of the *Journals of the Senate* contains this sentence:

> We remain puzzled about why the government would have dismissed Mr. Justice Gomery's recommendation and instead proposed a much more restrictive definition of what constitutes reprisals by employers against whistleblowers.

Honourable senators, it is not the Senate's role to question or try to determine the government's political motivations. The government made political choices. If it was wrong and if Canadians reach that conclusion, they will decide the government's fate at the next election. It is not up to the Senate to do so.

I understand that some of you are frustrated with the result of the last election. Nevertheless, it is not the Senate's role to question the government's political intent.

Honourable senators, we will have a debate at third reading of the bill, and I hope to have the opportunity to speak at that point. I feel that the report you have before you is ill-advised and should not have been adopted. However, the Liberal majority on the committee decided otherwise. I humbly ask you to reject these amendments.

[*English*]

Hon. Larry W. Campbell: Would the honourable senator accept a question?

The honourable senator speaks eloquently of why, according to his personal reasons, the amendments made by the Senate committee are outside our jurisdiction. While I am very junior here and admit that, unfortunately I do not know where he comes by these qualifications to be the person to decide what this house is doing and what is right and not right.

I would suggest to the honourable senator that the idea that we slather for some sort of a power is ill-conceived on his part.

Is it not true that the honourable senator's comments are solely based on whose ox is getting gored and not on the facts of the issue?

[*Translation*]

Senator Nolin: Honourable senators, I will be pleased to answer that question. My answer has two parts.

First, my interpretation of the Senate's authority is based on a book published under the direction of the honourable Senator Joyal. With the help of several Canadian experts, the authors examined the role and purpose of the Senate. Based on that book, I spoke about the duty of restraint that, in my opinion, senators must discharge when they act.

I will not answer your the honourable senator's second question, because it does not strike me as likely to stimulate an intelligent and useful debate.

[*English*]

Senator Campbell: I am glad that the honourable senator has read Senator Joyal's book, because I, too, have read this tome. I find it incredibly interesting, and it was the basis for my accepting this position in the chamber.

Frankly, although I have to admit my memory may not be as good as that of the honourable senator, I cannot recall any one section in there that bolsters the argument that he is putting forward that somehow this Senate committee was acting unethically, outside its bounds or in any way that would bring disrepute to this place.

Would the honourable senator consider re-reading the book to see if it does, in fact, bolster his argument?

[*Translation*]

Senator Nolin: Honourable senators, after hearing Senator Campbell's remarks, I think I will re-read Senator Joyal's book. However, I believe my memory serves correctly in concluding the following: Although we hold powers similar to those of the House of Commons, in 140 years of Senate existence, we have acted while exercising this duty of restraint, which is part of the philosophy that the Fathers of Confederation had in mind.

On motion of Senator Fraser, debate adjourned.

CONSTITUTION ACT, 1867

BILL TO AMEND—REPORT OF SPECIAL COMMITTEE SENATE REFORM—DEBATE ADJOURNED

The Senate proceeded to consideration of the first report of the Special Senate Committee on Senate Reform (subject matter of Bill S-4, An Act to amend the Constitution Act, 1867 (Senate tenure)), tabled in the Senate on October 26, 2006.

Hon. Daniel Hays (Leader of the Opposition): Honourable senators, I am delighted to have this opportunity to speak to the matter of the first of two reports prepared by the Special Senate Committee on Senate Reform; that is, the report on the subject matter of Bill S-4. Later this week, I will speak on the report concerning the Murray-Austin motion, which aims to increase Senate representation for the western provinces.

Furthermore, in the coming days, I will address the motion aimed at extending the work of our committee, given the many questions raised on page 35 of our report on Bill S-4.

[*English*]

First, I would like to thank members of the committee and, in particular, the deputy chair, Senator Angus, who have dealt with a complex subject with great insight, efficiency and open-mindedness. Many of our witnesses commended the non-partisan nature and expertise of the Senate, and our committee exemplified both qualities admirably.

Moreover, I would like to thank the clerk, Cathy Piccinin, the Library of Parliament's researchers, led by Dr. Jack Stilborn and all members of staff. No acknowledgement would be complete without highlighting the exceptional dedication of our translators and interpreters. Our schedule of hearings was intense, our deadline for drafting the report fairly short and all staff performed admirably and professionally throughout.

I wish to begin my observations by emphasizing that Bill S-4 as it stands will not affect sitting senators. The views expressed about Bill S-4 are not based on personal interest, but rather are grounded in the involvement and governance of this complex federation we call "home."

I believe that senators have a unique and extensive knowledge and expertise about the Senate's role and that their views on reform will be guided by experience and a desire to make this institution and our federation better.

Honourable senators, it has often been said that calls for Senate reform are one of the enduring features of Canadian political life. Reform of the Senate has been a discussion topic from the earliest years following Confederation. The issue was debated in the House of Commons as early as 1874 and several times after that, as well as in the 1887 interprovincial conference with proposals ranging from outright abolition to allowing the provinces to choose senators.

Despite all this talk of reform, there have been only two constitutional amendments regarding the Senate since 1867, one of which was the mandatory retirement age at 75 enacted in 1965, and the 1982 qualified veto over certain constitutional matters.

As well, over the past 30 years, there have been at least 28 important proposals for Senate reform, including two major constitutional initiatives, none of which have produced change.

Honourable senators, the latest proposal for reform in the Senate was introduced by the government last May. This is the first constitutional proposal regarding Senate reform introduced by a government in over 15 years, and it deserves our careful consideration.

• (2030)

When first addressing the issue of Senate reform in their campaign platform the Conservatives said they wanted to create "a national process for choosing elected senators from each province and territory."

As well, in its Speech from the Throne, the government said it was determined to modernize the institution so that it better reflects the democratic values of Canadians and the needs of Canada's regions. In introducing Bill S-4, which would limit the term of new senators to eight terms, the government characterized this bill as a first step in the reform process.

[*Translation*]

Given the significant change being proposed and the need to examine Senate reform in a broader context to help us make a well-considered decision in the matter of this bill, the Senate created a special committee to examine the intent of this measure as well as the Murray-Austin motion. In September, our committee held hearings and received testimony from illustrious parliamentary and constitutional experts, including the unprecedented appearance of a prime minister before a Senate committee.

[*English*]

I must underline that our study was helped by the Prime Minister's willingness to appear before us to explain the bill and to comment on Senate reform. When he testified on September 7, the Prime Minister said that the purpose of Bill S-4 was to "make the Senate more democratic, more accountable and more in keeping with the expectations of Canadians." As well, he indicated the next steps toward a more effective and democratic Senate will take place "hopefully this fall [when the government] will introduce a bill in the House to create a process to choose elected senators."

[*Translation*]

It is interesting to note that some of the witnesses were of the opinion that any reform should wait until the other changes proposed have been studied, or at least wait for the next element to be put in place. Mr. Gordon Gibson said:

> Senate reform cannot be incremental. These things are so intertwined and so many tradeoffs are involved, you have to deal with them all at once. I understand that is a serious constitutional problem that is messy and complex.

However, most witnesses were of the opinion that we could go ahead with this bill, and did point out that we should consider it in the context of a broader reform of the Senate.

[*English*]

Having long been an advocate of Senate reform I am intrigued by the Prime Minister's promise to elect senators. However, such elections raise numerous important questions. For instance, although having the Prime Minister appoint senators using advice of his or her choice does not violate the Constitution, it does create, as experts pointed out during our committee's hearings, a somewhat illusory situation. Accordingly, even if the current Prime Minister feels bound to appoint senators chosen by advisory or consultative elections, there is no guarantee his successors will.

Honourable senators, it also remains to be seen whether the government's promised follow-up bill will provide a Senate that is appointed through advisory or consultative elections. During our hearings, witnesses did not all agree on whether such reform could be achieved without resorting to section 38 of the Constitution, which requires substantial provincial consent. However, they all agreed that a truly elected Senate would involve major changes to Canadian constitutional law and conventions, and require engagement with the provinces.

Be that as it may, the upcoming bill on electing senators will no doubt figure prominently in the speeches given by honourable colleagues during our discussion of this report as well as during our subsequent debates on Senate reform.

One of the main criticisms of Bill S-4 during the second-reading debate pertained to the bill's constitutionality and whether the government could proceed with the reform without approval from the provinces. However, after hearing from numerous scholars and constitutional experts, the committee concluded that Bill S-4 could proceed under section 44 of the Constitution Act, 1982, which stipulates that Parliament can "exclusively amend the Constitution in relation to the executive Government of Canada, the Senate and the House of Commons."

Some of our witnesses suggested that there was some doubt about this, and that it might be advisable to refer Bill S-4 to the Supreme Court of Canada to establish its constitutionality. For instance, Professor David Smith from the University of Saskatchewan called for such a referral. He argued that it should be established whether the change proposed by the bill was compatible with the Senate's role as protector of regions and minorities, acting with considerable independence from the executive. However, the majority of witnesses felt the constitutional issue was sufficiently clear and that a reference would not be necessary.

In addressing the constitutionality of Bill S-4 and the change in tenure, senators and witnesses often alluded to the Senate Reference, or the Supreme Court's 1979 decision on the Senate. According to the court, a change in tenure appears to be within the powers of Parliament acting alone, or by virtue of section 44, as long as it does not affect a "fundamental feature or essential characteristic" of the Senate.

Most witnesses agreed that shortening terms to eight years would not affect such characteristics, and that Parliament could act alone in implementing this change. However, there was less agreement on how much that tenure could be reduced. As a government witness acknowledged, one year clearly would be too

little, potentially allowing for abolition, which constitutionally requires unanimity. Most committee members endorsed the underlying purpose of Bill S-4, namely that a defined limit to the terms of senators would improve the way Canada's Senate operates. Members agreed that limiting terms would provide a more vigorous circulation of ideas as well as invigorate the Senate and enhance its credibility. However, there was some difference of opinion with regard to the length and renewability of terms.

I pause for questions here, honourable senators, but perhaps questions at the end would be more convenient.

Senator Murray: We have already had a vigorous circulation of ideas tonight.

Senator Hays: For my part, I find the non-renewable 12-year term interesting, since it would allow for a greater turnover of senators while also helping to preserve greater independence from the executive.

Moreover, since the Prime Minister indicated he was willing to entertain amendments pertaining to the length of tenure when he appeared before committees we should take a look at a longer term. Before taking a final position on this issue I will listen carefully to the views of my colleagues.

Among other major concerns expressed about Bill S-4 as it stands is the possibility it would allow a prime minister in office for two terms to appoint close to the entire Senate and that the renewability of terms would undermine the independence of senators. This concern would not be a problem if we have an elected system; however, as it stands, without further reforms, Bill S-4 would actually increase the Prime Minister's control over the Senate.

Honourable senators, in determining what length of tenure would be most appropriate, whether something important might be lost by electing senators, and other issues raised by Bill S-4, I believe it is important to underline that great care must be taken in proceeding with Senate reform. We must take this opportunity to build something even better than what we have, and not just destroy it in the hopes of something better emerging.

Two of our witnesses, Professor McCormick and Mr. Gibson, agreed with that view. In response to a question, Mr. McCormick said, "Political institutions take a long time to build properly and get working, but they are incredibly easy to smash..."

To which Mr. Gibson added, "Whatever happens, the current Senate works. Improve it by all means, but do not make it worse."

Honourable senators, any objective assessment of the Senate and its work confirms that it plays a useful and important role in our parliamentary system, and any reform of the Senate must take this role into account ultimately to produce concrete improvements.

I believe that as we move ahead with this exercise to debate, study, pass, amend or reject Bill S-4, we must remember that any reform to our Senate must be conducted with great care and with the ultimate purpose of improving the institution.

• (2040)

In studying Bill S-4, the committee was constantly drawn into further discussion on what I would call "the structure of Senate reform" or "the role of a modern Senate within our parliamentary structure." There are examples of that today. However, more study needs to be done in this regard. I will argue later this week that the committee continue to explore other possible reforms that can proceed under section 44 and to discuss a model for a modern Senate. The model is not to be proposed as a constitutional initiative, but rather a model that might help senators to better understand how incremental reform might lead to a better Senate.

In short, Bill S-4 and the Murray-Austin motion have placed us in the arena of Senate reform. Both matters are to be seen as only the beginning of a process that, once undertaken, is difficult to stop. It will involve competing interests, differing views and multiple agendas, but it is a task worth undertaking in my opinion and a job worth completing both for the Senate and for Canada.

Senate reform should be guided by the history, logic and value of the system. We should recognize and build on what is uniquely Canadian about our Senate and avoid importing approaches that, while they may work in other countries and in different contexts, might be completely at odds with our system of government and political culture.

[*Translation*]

To guide us and perhaps inspire us when we undertake the task awaiting us, I would like to conclude by quoting one of our witnesses, Professor Daniel Pellerin:

> What Canada needs is not just a changed or slightly improved Senate but the best Senate we can bequeath to posterity. That is our call and our duty and we should aim for nothing less... only that can be the standard by which our work has to be measured and by which we will stand or fall before those in the years to come who will ask themselves, what did those ladies and gentlemen do for Canada at home?

[*English*]

Honourable senators, I look forward to our continued study and debate of this issue. I know that with our experience, expertise and institutional memory, we will help to renew a great institution and achieve something of which all Canada will be proud.

Hon. Lowell Murray: Might I ask the Deputy Leader of the Government what the intention of the government is with regard to this matter before the house? There is a report of the committee, to which the Leader of the Opposition has just spoken, on the subject matter of Bill S-4. The bill has not yet received second reading and is still on the Order Paper. Are these two debates to go forward in parallel fashion or will the house conclude the debate on the subject matter before returning to the bill? Has there been any discussion or arrangement between the two sides on this matter?

[*Translation*]

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, both subjects can certainly be debated simultaneously. Nothing prevents us from referring Bill S-4 to committee. In fact, that is what we would prefer.

That would not prevent certain senators from taking part in the debate at the report stage. I expect there will be other discussions about how to proceed.

On motion of Senator Comeau, debate adjourned.

[*English*]

PARLIAMENTARY EMPLOYMENT AND STAFF RELATIONS ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Serge Joyal moved second reading of Bill S-219, to amend the Parliamentary Employment and Staff Relations Act. —(*Honourable Senator Joyal, P.C.*)

He said: Honourable senators, Bill S-219 appears technical, but it is closely related to another item on the *Order Paper and Notice Paper* at page 17: Motion No. 104, introduced by the Honourable Senator Andreychuk. In her motion, she proposes that we refer to the Standing Committee on Rules, Procedures and the Rights of Parliament the issue of developing a systematic process for the application of the Charter of Rights and Freedoms to the Senate of Canada.

I invite honourable senators to pay attention to the situation in which they now find themselves in the Senate, given the decision of and the essential question raised by the Supreme Court of Canada in June 2005. Chief Justice Beverley McLachlin of the Supreme Court of Canada asked the parties in the *Vaid* case:

> Is the Canadian Human Rights Act constitutionally inapplicable as a consequence of parliamentary privilege to the House of Commons and its members with respect to parliamentary employment matters?

In simple terms the question is: Are the employees of the Senate, the House of Commons and the Parliament of Canada generally protected by the Canadian Human Rights Act? It is a simple question to put, but the answer is complex. Unable to imagine the contrary, any one of us would think that an employee of the Senate or of Parliament would be protected in his or her human rights and freedoms. How could it be that Parliament would discriminate, perhaps unintentionally, against a Canadian with no course to seek redress?

Senator Andreychuk asked: Does the Charter of Rights and Freedoms apply to the employees of Parliament? We praise ourselves that Canada is blessed by the Charter of Rights and Freedoms, but the clear issue is that no employee of Parliament can use the Charter of Rights and Freedoms in seeking redress before the courts. Honourable senators might be surprised by the decision in the *Vaid* case, but that was the conclusion of the Supreme Court of Canada. Many honourable senators will recall that the Senate Rules Committee studied this issue over at least eight meetings. Mr. Vaid was the former driver of a speaker of the House of Commons. He claimed one day that he was dismissed on the basis of discrimination. Mr. Vaid happens to be a visible minority. He sought redress at the Canadian Human Right Tribunal, but the House of Commons lawyers argued that Mr. Vaid could not seek redress at the Canadian Human Rights Tribunal because he was an employee of Parliament and, being an employee of Parliament, his position was privileged.

• (2050)

What does that mean? It means that Mr. Vaid could not go to a court of law to get an order to compel Parliament to put into place a grievance mechanism or compensation that would be adapted to the solution to his case.

The lawyers for the House of Commons argued that all 5,000 employees of Parliament are in that situation. Who are the 5,000 employees of Parliament? I have a list of all of them and I will read that very quickly: The Senate has 605 employees; the Library 400; the House of Commons, 2, 033; the MPs have 1,927, for a total of 4,965. Those statistics do not include casual or contract employees of the Senate.

Therefore, there are 5,000 employees of Parliament. According to the interpretation that the lawyers of the House of Commons put forward at the Supreme Court, none of them are protected directly by the Canadian Human Rights Act.

This seems impossible, in a system with a rule of law, in a democracy that is ruled or inspired by the values of the Canadian Charter of Rights and Freedoms, that such a situation cannot be addressed properly.

The court, in its decision in June 2005, suggested and concluded that an employee such as Mr. Vaid is protected by the Canadian Human Rights Act contrary to what the lawyers of the House of Commons submitted, but that in order to seek grievance or redress, that person must address himself under the Parliamentary Employment and Staff Relations Act, PESRA.

In other words, if that employee feels that he or she has a grievance that involves the Canadian Human Rights Act, that employee cannot go before the Canadian Human Rights Tribunal but must seek redress under the Parliamentary Employment and Staff Relations Act.

The problem with PESRA, which was adopted in 1985, is that it does not provide for protection in terms of its grievance procedure which is equivalent to the Canadian Human Rights Tribunal. It is as if I were to say, "You are protected by the law, but you will not go before a court of justice that will afford you the same kind of protection as if you were to go before a normal court of justice."

For instance, the decisions of the Canadian Human Rights Tribunal are reviewable by a court, but decisions that are rendered under the Parliamentary Employment and Staff Relations Act are not reviewable by the court. Moreover, the Canadian Human Rights Tribunal can order compensation and can reinstate with the proper mechanism of redress for which the Parliamentary Employment and Staff Relations Act does not provide.

The Supreme Court concluded that if an employee wants to seek redress under PESRA, that employee is less protected than an employee of the Public Service Commission.

There is another act called the Public Service Labour Relations Act that governs public service employees. That act is fairly recent. Honourable senators will remember that we adopted it in 2003. That act is modern in its mechanism to protect a public service employee who seeks redress under a human rights grievance. In other words, that new act, the Public Service Labour Relations Act, calls upon the Canadian Human Rights Commission to appear and to take a stand in support of the employees who seek redress or who have a grievance to file. In our other system, the Parliamentary Employment Staff Relations Act, the Canadian Human Rights Commission has no standing, no right to intervene and no possibility to support the claims or grievances of the employees.

The simple conclusion is that if one is an employee of the public service, generally, one is better protected than if one is an employee of the Parliament of Canada. That seems to be quite strange to Parliament, and especially the Senate, where we are so sensitive to any issue related to human rights and minority issues.

In any bill we always look for the impact of that bill on minorities. The situation in which we find ourselves, however, is that our employees do not have the same protection as the public service employees under the new act that we adopted in 2003. That is what the Supreme Court concluded.

There is another situation that is even more complex. The employees of Parliament are called "privileged." The three clerks we have tonight at the table and the Black Rod who we have at the end of this chamber all have privileged positions. In other words, they evade any review from the court. If they have a complaint to make, according to human rights and freedoms, there is absolutely nothing they can do to go to court, to seek redress under the Parliamentary Employment and Staff Relations Act, because they are not covered by that act, nor are they covered by the Public Service Labour Relations Act.

In other words, we have employees in Parliament who fall into a black hole. There is no regime to cover their rights and freedoms if they are not covered by the Parliamentary Employment and Staff Relations Act or if they are privileged.

The bill I am proposing and the motion that Senator Andreychuk is proposing will address that situation essentially. In other words, it will give to the employees of Parliament who are covered by the Parliamentary Employment and Staff Relations Act exactly the same protection that any employee of the Public Service enjoys under the new act that we adopted in 2003. The motion of Senator Andreychuk will address the condition of employees who happen not to be covered by any of those acts for which the status of protection of human rights has not been addressed and where there is no formal mechanism for those employees to seek redress when their human rights or freedoms are questioned in the object of a grievance.

Honourable senators, the terms of reference that the committee will receive, either to study the bill I am proposing or the motion that Senator Andreychuk will have an opportunity to move and speak on — and I am certainly happy to support the motion of Senator Andreychuk and to speak in support of it — is an issue that should be addressed as a whole.

Honourable senators should review those employees who are now compelled to seek redress in a system where they do not have the same protection as in the Public Service and the statutes of employees of Parliament who are not covered at all where their "Charter rights" are at stake. We should provide for these employees in the *Rules of the Senate*, as the other place should provide in its own rulings, because the decision of the Supreme Court of Canada applies in the House of Commons and in the Senate, whereby the proper recommendation could be made for an amendment of the *Rules of the Senate* to address the issue raised by the Honourable Senator Andreychuk.

Honourable senators, I know this is a complex issue and I know it is late, but in looking at the Order Paper today, the bill I was proposing was at the eleventh day and I seek your concurrence so that we can continue the discussion and deliberation of that bill.

On motion of Senator Comeau, debate adjourned.

• (2100)

[*Translation*]

PERSONAL WATERCRAFT BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Spivak, seconded by the Honourable Senator Segal, for the second reading of Bill S-209, concerning personal watercraft in navigable waters.—(*Honourable Senator Comeau*).

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, many Canadians use personal watercraft in their leisure activities. They are also important to the Canadian economy.

[*English*]

As of January 31, 2005, Bombardier Recreational Products generated revenues of roughly $2.5 billion. As of March 2005, it employed over 6,200 people. Given these figures, it is easy to see why the matters raised in this bill need to be given very careful consideration.

However, given that the sponsor is not in the chamber at this moment, I would like to adjourn the debate for the remainder of my time so that Senator Spivak may be present for further examination of this bill.

On motion of Senator Comeau, debate adjourned.

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

NAME CHANGE OF FOREIGN AFFAIRS COMMITTEE TO INCLUDE INTERNATIONAL TRADE— THIRD REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the third report of the Standing Committee on Rules, Procedures and the Rights of Parliament (*amendment to rule 86(1)(h)—Foreign Affairs Committee*), presented in the Senate on October 24, 2006. —(*Honourable Senator Di Nino*)

Hon. Consiglio Di Nino moved the adoption of the report.

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

Motion agreed to and report adopted.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

SIXTH REPORT OF COMMITTEE WITHDRAWN

The Senate proceeded to consideration of the sixth report of the Standing Committee on Internal Economy, Budgets and Administration (*Economic Increase and Budget Increases*), presented in the Senate on September 28, 2006.—(*Honourable Senator Furey*)

Hon. George J. Furey: Honourable senators, with the concurrence of the Standing Committee on Internal Economy, Budgets and Administration, I seek leave of the Senate to withdraw the sixth report at this time.

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

Hon. Senators: Agreed.

Report withdrawn.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I think His Honour will find agreement that all items remaining on the Order Paper and Notice Paper stand in their place.

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

Hon. Senators: Agreed.

The Senate adjourned until Tuesday, October 31, 2006, at 2 p.m.

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