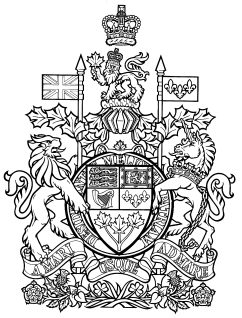

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OFFICIAL REPORT
(HANSARD)

Wednesday, December 13, 2006

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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THE SENATE

Wednesday, December 13, 2006

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

Prayers.

SENATORS' STATEMENTS

PRESIDENT OF IRAN

HOLOCAUST DENIAL CONFERENCE

Hon. David Tkachuk: Honourable senators, Edmund Burke, a great English philosopher and famous Conservative, once observed, "All that is necessary for the triumph of evil is for good men to do nothing."

I recalled that bit of wisdom this morning when I read the heinous and vicious remarks of the President of Iran who was presiding over, what else, a conference of holocaust deniers. I was outraged to read, just as everyone in this chamber should be and is, that the evil man, that paragon of intolerance, has once again suggested the wiping out of Israel.

He remarked, according to the newspaper that I read, that the killing of six million Jews in the Second World War is a myth. He called, not for the first time, for Israel to be wiped off the map. Not only that, he implied that his demented wishes were what all nations wanted, thus incorporating the likes of you and me and every Canadian in his warped sense of the world.

His remarks should not go unanswered. I am glad to see that much of the world has condemned him, and I want to join in that condemnation in no uncertain terms, as I am sure do most sane people.

Yet, there are those who say we must engage Iran and that perhaps we should deal with this man in solving the problems of Iraq, that we can talk things out with him. Unfortunately, there are also some people who do not listen to reason and we need to recognize that.

I would argue that this man bears watching, and that good men and women the world over must be prepared to act to prevent the triumph of evil that is characterized by the President of Iran.

• (1335)

ACCESS TO INFORMATION ACT

AMENDING LEGISLATION

Hon. Lorna Milne: Honourable senators, I watched with interest the ceremony in this chamber when Royal Assent was given to Bill C-2, the federal accountability bill. Honourable senators were involved in many discussions regarding the various aspects of this bill. One portion of the bill in which I took a particular interest was the provisions designed to change the access to information regime in Canada. I felt, after reviewing the evidence heard by your committee on Legal and Constitutional Affairs, that a number of changes were absolutely necessary to the access to information provisions included in Bill C-2 in order for it to achieve the goals stated by the President of the Treasury Board upon introduction. He said:

> . . . the government should not unnecessarily obstruct access to information.
>
> We are absolutely committed to making government more open while balancing legitimate concerns for personal privacy, commercial confidentiality and national security.
>
> We will change access to information legislation to promote a culture of increased openness and accessibility.

It is with all of this in mind that I rise to give honourable senators fair warning that I will introduce a bill amending the Access to Information Act in the near future. It is my intention for this proposed legislation to have three components, two of which are designed to remove government imposed restrictions on access to information that were created by Bill C-2. The third component of the bill will introduce a provision that provides authorization for disclosure where a clear, overriding public interest exists to have information released.

The three changes that I will propose — greater access to information held by the Auditor General, the Commissioner of Official Languages and the inclusion of a public interest override — are the kinds of changes that Canadians expected to find in the federal accountability bill. My bill will ensure that officers of Parliament are treated fairly and equally under the Access to Information Act. This proposed bill will also support Justice Gomery's rejection of the argument that audit working papers should be kept secret forever.

I urge honourable senators to review the proposed legislation when it is introduced because I believe it will provide sensible changes to Canada's access to information regime and a positive step toward greater transparency.

NATIONAL DEFENCE

TRIBUTE TO NAVY

Hon. Hugh Segal: Honourable senators, as we come to the end of 2006, I rise today to put on record and pay tribute to the achievements of the Canadian Navy. The accomplishments of these past 12 months are numerous and deserve our recognition and gratitude. While it is impossible in the time allotted to list each and every success, I would like to put on the record some of the highlights of 2006.

The Canadian Navy has been defending our coasts and enforcing Canadian sovereignty in our waters through a series of important initiatives and patrols. For example, Maritime Forces Pacific, MARPAC, hosted Exercise Trident Fury, the largest ever world-class warfare exercise, with participation from Canada, Australia, the U.S., the U.K. and NATO forces.

HMCS *Fredericton* was deployed for two months to the Gulf of Guinea in a successful counter-drug operation in collaboration with the Royal Canadian Mounted Police to keep dangerous and illegal drugs from Canadian shores and young people.

HMCS *Windsor* contributed significantly to national and multinational exercises as a member of the submarine fleet.

Naval personnel from Ottawa and from both coasts contributed to operations with Task Force Afghanistan and with training for that in Wainwright, Saskatchewan.

Our navy has been leading CF transformation through their efforts with Joint Task Force Atlantic and Joint Task Force Pacific, and with the support of the U.S. Navy and Marine Corps and Integrated Tactical Effects experiment — Canada's first expeditionary and joint amphibious activity in many decades.

This year, Commodore Denis Rouleau has been at the helm of NATO's high readiness maritime response force. He led Canada's contribution to the Alliance's NATO Response Force abroad from the decks of HMCS *Athabaskan* and HMCS *Iroquois*, helping to contribute to the success of the response force overall.

HMCS *Ottawa* became the twentieth Canadian ship operating with coalition forces in the Middle East and is currently alongside a U.S. expeditionary strike group in the Persian Gulf.

• (1340)

The Canadian navy also hosted international visitors, playing the important diplomatic role that navies do, including, in 2006, ships from the Chinese People's Liberation Army, the Republic of South Korea and the French navy. In September, Canada welcomed 200 participants from 18 nations, wanting to share information on issues affecting maritime security in the Indo-Pacific region.

Canada's navy continues its high level of engagement with the United States, our closest ally and training partner, and the capabilities and strengths of our navy are not lost on our American friends.

Two Canadian officers were awarded the Legion of Merit by the American President. Naval Captains Richard Harrison and Jimmy Heath were recognized for their efforts in advancing multinational operations and contributing to continental home defence initiatives.

None of these impressive accomplishments could have been achieved without the tremendous effort of all those ashore in the maintenance facilities, test establishments, schools and administrative support centres.

I am proud to put on the record but a few of the Canadian navy's achievements in 2006. I look forward to more success and more recognition for their work and for the men and women so involved in 2007.

There was never a question as to whether there is a navy present in our lives. The only question is whether ours is present, and ours always is doing a remarkable job for all Canadians.

[Senator Segal]

NATIONS OF CANADA

Hon. Charlie Watt: Honourable senators, a nation is a community of people living in the same territory and sharing a common history, culture, economy and common value.

On November 22, 2006, Prime Minister Harper tabled a motion stating:

> . . . that the Québécois form a nation within a united Canada.

Honourable senators, this is true. Let me remind you, however, that the first inhabitants, the Inuit, are and will remain a nation.

On March 19, 1985, the then Premier of Quebec, the Honourable René Lévesque, tabled a motion on the same subject matter. It read as follows:

> That the National Assembly recognizes the existence of the first inhabitants nations in Quebec, naming the Abenaki, the Algonquin, the Attikamek, the Cree, the Huron, the Micmac, the Mohawk, the Montagnais, the Naskapi and the Inuit.

The same motion recognized their ancestral rights and their rights from the James Bay and Northern Quebec Agreement. Those agreements and future such agreements had the value of treaties.

The motion invited the National Assembly to subscribe the engagement of the government toward Aboriginal peoples for a better and accurate acknowledgment of their rights.

The motion respected legitimacy, and it is important for Quebec society to set up harmonious relations based on mutual respect and trust, and that is what has been done. It was adopted in the National Assembly in 1985 with a majority.

The question of "nation" has been discussed from time to time in the past and still remains today unresolved. We all should come to the conclusion that there are many nations in this country under a united Canada.

ROUTINE PROCEEDINGS

STUDY ON RURAL POVERTY

INTERIM REPORT OF AGRICULTURE AND FORESTRY COMMITTEE TABLED

Hon. Joyce Fairbairn: Honourable senators, I have the honour to table, in both official languages, the sixth report of the Standing Senate Committee on Agriculture and Forestry entitled: *Understanding Freefall: The Challenge of the Rural Poor*.

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

• (1345)

[*Translation*]

SOFTWOOD LUMBER PRODUCTS EXPORT CHARGE BILL, 2006

MOTION TO WITHDRAW BILL FROM NATIONAL FINANCE COMMITTEE AND REFER TO FOREIGN AFFAIRS AND INTERNATIONAL TRADE COMMITTEE ADOPTED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1), I move:

> That Bill C-24, An Act to impose a charge on the export of certain softwood lumber products to the United States and a charge on refunds of certain duty deposits paid to the United States, to authorize certain payments, to amend the Export and Import Permits Act and to amend other Acts as a consequence, which was referred to the Senate Standing Committee on National Finance, be withdrawn from the said Committee and referred to the Standing Senate Committee on Foreign Affairs and International Trade; and
>
> That the Standing Senate Committee on Foreign Affairs and International Trade have the power to sit today, Wednesday, December 13, 2006, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

Motion agreed to.

ADJOURNMENT

NOTICE OF MOTION

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

> That when the Senate adjourns on Thursday, December 14, 2006, it do stand adjourned until Tuesday, January 30, 2006, at 2 pm.

CANADA-CHINA LEGISLATIVE ASSOCIATION

BILATERAL CONSULTATIONS, OCTOBER 7-15, 2006—REPORT TABLED

Hon. Joseph A. Day: Honourable senators, pursuant to rule 23(6), I have the honour to table, in both official languages, the report of the Canadian delegation to the Canada-China Legislative Association respecting its participation in the ninth Bilateral Consultations, held in Beijing, Guangzhou, Macao and Hong Kong, from October 7 to 15, 2006.

[*English*]

CANADA-AFRICA PARLIAMENTARY ASSOCIATION

ELECTION OBSERVATION MISSION, JULY 28-AUGUST 1, 2006—REPORT TABLED

Hon. A. Raynell Andreychuk: Honourable senators, I have the honour to table, in both official languages, the report of the Canadian parliamentary delegation of the Canada-Africa Parliamentary Association respecting its participation at the election observation mission held in Kinshasa, Democratic Republic of Congo, from July 28 to August 1, 2006.

ELECTED SENATE

PROPOSED MODEL—NOTICE OF INQUIRY

Hon. Daniel Hays (Leader of the Opposition): Honourable senators, I give notice that at the next sitting of the Senate:

> I will call the attention of the Senate to the issue of developing a model for a modern elected Senate, a matter raised in the first report of the Special Senate Committee on Senate reform.

• (1350)

QUESTION PERIOD

FINANCE

BUDGETARY CUTBACKS

Hon. Daniel Hays (Leader of the Opposition): Honourable senators, my question to the Leader of the Government in the Senate returns to the matter raised yesterday in Question Period about the roughly $7.4 billion in cuts that were dealt with in a press conference held by members of the opposition yesterday.

Can the Leader of the Government give us some indication of the timing of the implementation of these cuts and, at the same time, the way in which the cuts have been arrived at, or, if they have not been finalized, how they will be finalized? I am thinking particularly in terms of what it was by way of the honourable leader's explanation of the $1 billion in cuts that have been so controversial, her role in that process, and the use of value-for-money programs that were thought to be unnecessary, and so on.

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for his question. This is a unique situation for the Leader of the Government in the Senate in that the Liberal opposition put out a press release stating many figures as if they were fact, and then expecting me as the Leader of the Government in the Senate to respond to them. That is a unique situation.

The $7 billion figure used by Senator Hays yesterday was the Liberals' spending plan, presented in the previous government's November 2005 economic statement and fiscal update, and in Bill C-66. Their so-called mini-budget was not voted on in Parliament and subsequently was not implemented.

To say that we are only cutting programs is false. It is incorrect and incomplete. As the Prime Minister said in the other place yesterday, and I said in this place, instead of just getting rid of programs we will be replacing them with far more effective programs that are much more mindful of the needs of Canadians where they work and live, and much more respectful of Canadians' hard-earned tax dollars.

Senator Hays: Having read the materials that gave rise to this press conference, I agree that the Leader of the Government is right: It was the 2006 budget that referred to a number of measures in the economic and fiscal update, which I think were valuable and important. It is a legitimate question to the government as to why they are not proceeding with these measures.

What is wrong with $550 million for the Canada Access Grants for students from low-income households and students with permanent disabilities? What is wrong with the $219 million for home heating system cost relief? What is wrong with $500 million for the Canada Foundation for Innovation? What is wrong with $109 million for Canada's trade commissioners? What is wrong with $2.1 billion for student financial assistance? Can the minister give us a good answer to those questions?

Senator LeBreton: Honourable senators, my answer will be the same as it has always been. When we were elected on January 23, we were not elected to carry on with certain Liberal policies and plans. We were elected to implement the commitments that we made to the Canadian public in the election. When the honourable senator asks the question, "What is wrong?" he is relating to his view of the world. We have a different view of the world. That is why we have budgets. That is why a government, over the period of its mandate, announces its own programs and platforms. To present to you the platforms and programs that may come out of a budgetary process on which we are presently working would obviously serve the opposition's purposes, but it would not serve ours.

Senator Hays: Madam Minister, that misses the point. It would serve the purposes of good Canadian public policy. It is not the role of a new government to simply pick and choose, based on arbitrary reasons, when there are good spending programs in place. When there are good policies in place, they should continue to be pursued. When they are not, they should be changed, or not pursued at all.

• (1355)

In these cases, I ask why these very good programs that were announced and that were funded are not being proceeded with, because they are excellent programs. I put the question again, because I do not think it is a good answer to simply say that the government changed.

Many policies that are in place — some that were part of an economic statement, previous budgets and so on —are always under review. However, these are very good programs, by any measure. This government should accept them. If it does not, it should have a good reason why not and it should have alternative programs in hand to say that these programs are the replacement programs and are better, in the opinion of your government.

I will give the minister an opportunity to give that answer.

[Senator LeBreton]

Senator LeBreton: I will not give that answer. There are many programs from one government to another that are maintained and expanded upon. Indeed, there are programs of the previous government that this government has kept in place and expanded upon. That does not say that a government is not within its rights to judge programs with regard to commitments that we made to the public.

I would say to the Honourable Senator Mercer that they should put you on a tugboat in Halifax harbour. They would not then need a foghorn, that is for sure.

Our government will be announcing different programs in the future that we think will benefit the Canadian public. We have already announced programs for Aboriginals, youth and people at risk.

I would simply say to the Honourable Senator Hays that he obviously feels strongly about these programs, and he is quite within his rights to do so since he supported the government that brought them forward. I would say equally, however, that I and the people on this side have the right to bring forward policies and programs that we believe in, and to which we committed ourselves during the last election.

Senator Hays: Good programs, I think, Madam Minister, transcend governments, no matter which government brought them in. As the minister has observed, I believe these programs are good programs. Perhaps I will just confirm at the end that it is the leader's answer that the government of the day, having announced the elimination of these programs, has no intention of replacing them with programs filling the same needs or that they think will do what it is that these programs were designed to do in a better way.

Senator LeBreton: Honourable senators, Senator Hays is again trying to put words into my mouth. I am quite sure, when we check the record, that he will find I did not say we did not have programs that we were about to commit to in the same areas. They may not be the programs that his government advocated. However, he is incorrect in assuming that this government will not be bringing in programs in those exact same areas.

Senator Hays: I ask the minister to prove me correct. When will these programs be brought forward, and will they be comparable in terms of the support that these programs were designed to provide in these areas of need?

Senator LeBreton: Honourable senators, my answer to that question would be the same answer Senator Hays would give if he were on this side. He would not hand the opposition a timetable for when his government would bring in specific programs. I have no intention of doing so, either.

Senator Hays: It is the Canadian public who wants to know.

AGRICULTURE AND AGRI-FOOD

CANADIAN WHEAT BOARD— PROPOSAL TO ELIMINATE SINGLE-DESK SELLING FUNCTION—PLEBISCITE FOR BARLEY PRODUCERS

Hon. Grant Mitchell: Perhaps my first question should be: What does the Leader of the Government in the Senate have against tugboats?

Honourable colleagues, one of the consistent refrains from the opponents of the Canadian Wheat Board is: If they are so good, why can they not compete?

• (1400)

There is one critical reason why they would not be able to compete, and that is that, over the many years of their existence, what would have been profits they have passed along to farmers, while their competition has invested literally hundreds of millions of dollars in capital and infrastructure. It is common knowledge that the single greatest reason businesses fail is that they are undercapitalized.

If the government manages to cut the Canadian Wheat Board loose, are they prepared to invest literally hundreds of millions of dollars in the Canadian Wheat Board, give them the capital and the infrastructure, so that at least they have a competitive fighting chance?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I made myself clear yesterday, in answer to Senator Milne's question, that the government has no intention, to use her words, to blow up the Wheat Board. Simply, our commitment was, and is, to give grain producers in Western Canada marketing choice.

I was not present last night at the Standing Senate Committee on Agriculture and Forestry, but I am told by some observers that the representatives for the Wheat Board did not do a very good job in explaining or justifying to senators why they felt that they should have a total monopoly over the products of Western grain producers.

Senator Mitchell: Honourable senators, truly, the witnesses did an exceptionally good job.

If the government is not prepared to answer this question specifically by saying that they would put hundreds of millions of dollars into capital so that the Canadian Wheat Board would have a chance to compete, then what they are actually saying is that they do not want the Canadian Wheat Board to exist at all, because with its current capital structure, it would not be able to compete.

Will the Leader of the Government in the Senate please confirm that her government is prepared to put the money into the Canadian Wheat Board so that the Wheat Board could compete, or are they saying that they do not care whether the Canadian Wheat Board competes at all, or whether it exists at all, and that they really want to kill it?

Senator LeBreton: Honourable senators, I fail to see why the Canadian Wheat Board could not compete as an entity. I will simply repeat what I have said before. Obviously, there are strong opinions on both sides. I know of a farm family in Saskatchewan where one brother is of one view and the other is of another view, and they are hardly speaking to each other at the moment. It is an emotional debate for people in the industry.

Our government campaigned on marketing choice. There will be a barley plebiscite early in the new year. We have never said that we intended to kill the Wheat Board. However, we committed to Canadian grain producers that we would provide marketing choice. If farmers want to continue to sell their wheat through the Wheat Board, that is their choice. If they want to sell directly to market, that is their choice as well.

Senator Mitchell: Honourable senators, the Leader of the Government in the Senate is admitting that there is yet another Conservative policy that is breaking up families.

Is the government aware that if the Canadian Wheat Board is cut loose and the competitive structure becomes a disaster for Canadian farmers, it will not be possible, under the terms of the NAFTA agreement, to put the genie back in the bottle? One cannot re-establish a single-desk Canadian Wheat Board structure.

Senator Tkachuk: We do not know that.

Senator LeBreton: Senator Tkachuk is absolutely right; we do not know that. It is the big "if" word: If this were to happen; if that were to happen. There are examples in other jurisdictions — Ontario being one — where wheat producers have a choice and they market their product. I do not, for the life of me, understand why Senator Mitchell, a senator from Alberta, would not want his province's wheat, barley and grain producers to have the same rights as the wheat producers in Ontario.

Hon. Lorna Milne: Honourable senators, my question is directed to the Leader of the Government in the Senate. In my position as the senator for Peel Region in Ontario, I would like her comments on the following remarks from a letter that was sent on December 11 by the Peel Federation of Agriculture to the Minister of Agriculture.

• (1405)

> Peel Region has longstanding Conservative ties, being the birthplace of Bill Davis. We were also ably served by MPP Tony Clement with whom we had excellent rapport in the farming community. David Tilson represents us as our Member of Parliament.
>
> We have been following, with great interest, the developments of this government's initiative to dissolve the CWB. Even though in Ontario the CWB has no authority over the sale of wheat and barley and we are not directly affected by their decisions, we are deeply disturbed by the way your government has been handling the whole affair. Furthermore, since we do have marketing boards on other commodities (milk, eggs and chickens) and in light of the fact that Prime Minister Harper has, in the past, spoken against marketing boards, we fear that this initiative by you may be a precursor to the dismantling of these boards.
>
> We are particularly concerned with the announcement that you have attempted to fire Canadian Wheat Board President Adrian Measner. Also your manipulation of the democratic process of the board flies in the face of the principles of justice and fair play. When your party was the Official Opposition, you spoke out vehemently against the same patronage appointments and board manipulation that you are now committing.

In view of the sentiments in that letter, and in view of the overwhelming vote in the other place last night, will the Leader of the Government in the Senate ask Minister Strahl to guarantee that the question adopted by the other place last night will be the question put to the Western barley growers?

Senator LeBreton: Honourable senators, I thank the senator for that question. I am sure the association in Peel appreciates her reading their letter into the record. They expressed an opinion, which is their right, and have done so fervently.

The fact is that they are misinformed. We are not intending to get rid of the Wheat Board. As I have said many times, we are simply offering a choice in marketing. Surely, in this day and age, we can have a situation where Western farmers, when they produce their products, are able to market their products in the way they so wish.

With regard to marketing boards in Ontario and Quebec, I have stated in this place before, and it is stated government policy, that we are not changing the marketing board process in those jurisdictions.

Senator Milne: Honourable senators, to the Leader of the Government in the Senate, I thank her for that reassurance. If I may go on with this letter, it says:

> As Ontario farmers we are confident of the ability of marketing boards to act on our behalf. In a marketplace that is dominated by multinational corporations, marketing boards are our only hope for fair trade. Supply managed commodities are the only profitable sectors of agriculture in Canada.

I will relay to them quite gladly the minister's remarks that she will not attack the supply management community in Canada. However, the minister is attacking the supply management community in Western Canada through this dismantling of the Canadian Wheat Board.

Senator LeBreton: Honourable senators, Senator Milne and I are from the province of Ontario, and far be it from us to ascribe motives to our grain producers, because the issue here is not supply management.

I would like to ask the Honourable Senator Milne if she would provide me with a copy of that letter because I would like to have an opportunity to respond to it myself. However, as I have repeated on many occasions, what we campaigned on and what we were elected on was that we would provide marketing choice to wheat and barley producers in Western Canada. Clearly, as I have said in answer to Senator Mitchell, there are strong views on each side of this issue.

The fact is very clear and remains that this is a policy that the people were well aware of. We featured it day in and day out on the election campaign. No matter where people stand on this issue, they cannot say they did not know that we would, in fact, proceed with marketing choice for Western grain producers.

Senator Milne: Honourable senators, if I may just respond to the request for this letter, I would be delighted to give it to the honourable senator, but I have written all over it and would prefer she not see my remarks. However, it was sent to every member of Parliament in the other place, and I am sure that David Tilson can give her a copy.

• (1410)

Hon. Terry M. Mercer: Honourable senators, on a supplementary question, I find it curious that the Leader of the Government in the Senate has talked about their mandate, the 36 per cent vote they received from the Canadian public in January this past year, and talks about democracy. This past weekend, farmers in Western Canada voted 60 to 40 in favour of keeping the Wheat Board. Does the leader want to talk about democracy? That is a mandate, 60-40, as opposed to 36 per cent that the government received and that she has have interpreted to be some huge mandate.

I wonder if the Leader of the Government in the Senate could explain to me why she does not recognize that the farmers in Western Canada have made their decision. They voted this weekend and elected the directors of the Canadian Wheat Board who are strongly in favour of keeping the board and having a single desk.

Senator LeBreton: Honourable senators, it was not a vote on the future of the Wheat Board; it was a vote in specific areas on directors for the Wheat Board. You cannot take the results in those areas and ascribe them to the whole population of Western grain producers.

The honourable senator talked about the percentage of the population that supported the mandate of the government. Senator Mercer was the National Director of the Liberal Party and, if my memory serves me correctly, the Liberal party formed majority governments within the 40 per cent range, or 38 per cent, so we should not get into that argument because it just does not hold water in any case.

The fact is that the people that did vote for the directors voted freely and they made their choice. The government is aware of their choice of directors, but we are proceeding with the plebiscite on barley early in the new year. The government will proceed with the next step after the barley plebiscite.

The fact remains that most farmers, even though they are on both sides, are well aware of our campaign commitment to provide Prairie wheat and barley producers with a marketing choice. No matter what side of the argument you are on, if one side is vehemently opposed to this and thinks it is right, does that side have the right to impose its wishes on the side that does not agree?

Senator Mercer: The Leader of the Government in the Senate, over the Christmas period when she has time to rest and to watch some television, may catch a late night rerun of last night's committee meeting. I would commend it to her. The honourable senator would see in every district where there was an election there were two candidates, one pro single-desk and one anti single-desk. In the large majority of those districts, the pro single-desk people won in a very large majority of about 60-40. The farmers have spoken, and it is time the government recognized that and, frankly, got off the Wheat Board's back.

• (1415)

Senator LeBreton: I hate to confess to Senator Mercer that I actually do watch this stuff. I have to get a life and stop watching these reruns on CPAC.

I was told by people who observed the meeting that the Canadian Wheat Board did not make a very convincing case, but I guess Senator Mercer will say that it is all in the eye of the beholder. My point is that it is an issue with strongly held views on both sides. From my vantage point, as a former child of an Ontario agricultural operation, I still do not see why we should not allow people who produce products to have the marketing choice about where they want to sell the products. It is such a no-brainer.

NATIONAL DEFENCE

PROCUREMENT OF AIRLIFT AIRCRAFT

Hon. Jack Austin: Honourable senators, I have a question for the Leader of the Government in the Senate. Actually, I wanted to ask it of the Minister of Public Works; he has been sitting there so quietly, not being interfered with by this side, I thought it was his turn. However, as he is not here today, I will address it to the Leader of the Government.

It is really a set of questions that our late colleague Senator Mike Forrestall asked me on October 18, November 22 and November 23 of last year. I always enjoyed Senator Forrestall's questions. He was quite knowledgeable about National Defence issues. He actually kept me up to date, although I was always running behind him to find the answers.

This question relates to the C-130J, which, it is clear from statements of the Minister of National Defence in the other place, is under serious consideration to be procured for the Canadian military. Of course, that aircraft, as Senator Forrestall knew, was being considered by the military when I was in the cabinet, and we had not completed our appraisals on the lamented day on which our government was defeated.

The question I am concerned about, however, is the same one that Senator Forrestall addressed, and that is an open and transparent process of procurement that provides the public with the comfort of knowing the reasons for which the aircraft is purchased and that it is the best plane for the purpose at the best price.

We have reports today that Europe's Airbus Military is proposing to sue the Canadian government over what it views as unfair tendering practices. It believes that it has not been given an open and level playing field in terms of competition with the C-130J, which is a Lockheed Martin aircraft.

Is the government assuring the Canadian public that the process will be and will remain open and competitive? To ensure that this is the case, because I know the minister cannot give a comprehensive answer at this moment, will the minister agree that the Standing Senate Committee on National Security and Defence would have the opportunity to examine Minister O'Connor and officials of the Department of National Defence and the Department of Public Works so that the public can be convinced in the testimony they give that Airbus has indeed had a fair and equitable opportunity to compete for this contract?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, in June, the government announced that it would require authorized, urgent equipment acquisitions by the Canadian Forces for obvious reasons. This morning, I saw the article to which the senator has referred. As he noted, I am not in a position to answer in detail. I will take the question as notice. I am quite certain that the ministers responsible — Minister Fortier as Minister of Public Works and Minister O'Connor as Minister of National Defence — like all ministers, are more than happy to appear before any committee when invited.

• (1420)

Senator Austin: I thank the honourable leader for that answer. Three concerns have surfaced in the public domain: First, the American military are not prepared to contract for the C-130J; second, neither the C-130J nor the Airbus alternative has received its certificate of airworthiness; and third is the question of price. It is alleged that the government is proposing to pay exorbitant premiums in order to be the recipients of early delivery. I am not asking the leader to respond to those comments but, rather, I note that those issues will need be to considered.

Senator LeBreton: I thank Senator Austin for those comments. Certainly, I will include that information when the question is referred for a detailed response.

NATURAL RESOURCES

HAZARDOUS PRODUCTS ACT—PROPOSED NEW REGULATIONS FOR COMPOSITION OF ASBESTOS

Hon. Mira Spivak: Honourable senators, I have a question for the Leader of the Government in the Senate. For some time now, Canada has been promoting the so-called "safe use of asbestos," not for public health reasons but, rather, to fend off its foreign competitors in export markets. A briefing note for the Minister of Natural Resources clearly stated that foreign producers tolerate high-class Canadian producers because of Canada's leadership and credibility in promoting the sale of chrysotile. A director general for industry analysis said that Canadian companies are only marginally profitable and foreign competitors could easily drive them out of the international market but "there has to be something of interest to them to keep Canada in business."

The government recently proposed new asbestos products regulations under the Hazardous Products Act that are supposed to protect the health and safety of the public. However, in their new form, these regulations, according to the notice in the *Canada Gazette*, assist industry compliance in accordance with its safe use principle with regard to asbestos, which we know is also commercially motivated.

These regulations would apply to children's toys and educational materials. As long as those products do not contain crocidolite, which is blue asbestos mined chiefly in Zimbabwe, few restrictions will be imposed on their advertising, sale and import. Decades ago, the hazards of asbestos were determined by science using long-term epidemiology to examine Canadian workers exposed to Canadian asbestos.

I am not sure that the leader will have the answer to this question, and if that is so I would ask her to take the question as notice. On what scientific basis does this proposed regulation distinguish between Canadian asbestos, good, and Zimbabwe asbestos, bad?

Hon. Marjory LeBreton (Leader of the Government): I thank Senator Spivak for that question. I am delighted, as I am sure are all senators, that the honourable senator is back before the house in good health.

Hon. Senators: Hear, hear!

Senator LeBreton: Senator Spivak, chrysotile is the only asbestos fibre produced in and exported by Canada. Its production, transportation and use are rigorously controlled. I am aware of the situation in Zimbabwe. Canada has been working with its trading partners on effective implementation and enforcement of regulations that ensure low exposure levels and safe practices with chrysotile.

• (1425)

As the honourable senator may know, the parties from the Rotterdam Convention held in Geneva in October did not arrive at a consensus. They decided to defer consideration of listing chrysotile in the Prior Informed Consent procedure of the convention until the next meeting in 2008.

As the honourable senator may also know, Canada has asked the WHO, World Health Organization, to do a comparative analysis between chrysotile asbestos and man-made substitute fibres because any future decisions on listing of chrysotile must be based on, as the honourable senator would agree, sound scientific evidence.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, pursuant to rule 27(1), I hereby give notice that, when we proceed to Government Business, the Senate will address the items beginning with Item No. 3, under Bills, followed by the other items in the order in which they stand on the Order Paper.

[*English*]

INTERNATIONAL BRIDGES AND TUNNELS BILL

THIRD READING

Hon. J. Trevor Eyton moved third reading of Bill C-3, An Act respecting international bridges and tunnels and making a consequential amendment to another Act, as amended.

He said: Honourable senators, I am pleased to rise during third reading debate of Bill C-3, an act respecting international bridges and tunnels.

We heard something of the act yesterday when that well-known free enterpriser, Senator Mercer, as well as Senator Tkachuk commented on the bill. I will try not to repeat their remarks.

As you have heard, the Transport and Communications Committee met seven times to study this bill, starting November 8, 2006, when they heard testimony from Minister Cannon and Transport Canada officials. The committee also heard from core stakeholders: the Bridge and Tunnel Operators Association, an association that groups 11 of Ontario's busiest crossings; the City of Windsor; the Canadian Transit Company, owner and operator of the Ambassador Bridge; and the Teamsters Union. These are the same stakeholders that made representations to the House Standing Committee on Transportation, Infrastructure and Communities. These stakeholders have in common, a direct interest with Windsor and Windsor border issues. Much of the discussion in committee, therefore, focused on Windsor, its current traffic problems, the need for additional border security, initiatives led by governments on both sides of the border and by private entrepreneurs to build the next border crossing, issues about how this new crossing will be financed and who will ultimately own it.

Honourable senators, committee members listened to the particular concerns expressed by each of these stakeholders. The committee heard the City of Windsor's desire to be consulted in connection with all decisions made by the federal government with respect to any international bridges and tunnels either new or existing in its territory. Committee members heard of the city's fear that Bill C-3 would allow the federal government to extend its jurisdiction over international bridges and tunnels to municipal roads leading to those structures. The owners of the Ambassador Bridge fear that the federal government will use Bill C-3 as a means to build a new crossing that will compete and ultimately run the existing bridge out of business. The Teamsters' concerns are for the safety, security and privacy of its workers currently employed by these structures. All of these concerns are legitimate.

The Windsor region supports much of Canada's and Ontario's trade with the United States, our largest trading partner. Canada's economy would definitely suffer without the international bridges and tunnels that facilitate that trade.

That being said, Bill C-3 does not only apply to the international bridges and tunnels in the Windsor area. It applies to all of Canada's international bridges and tunnels, totalling 24. Some are new and existing; some are privately and publicly owned. That is why we must keep the bigger picture in mind.

• (1430)

The existing international bridges and tunnels were built in a different age. While they continue to serve us well, they require ongoing maintenance and will need to be updated, if not replaced.

The issue of aging infrastructure and how to pay for the renewal of this infrastructure is not only a concern to Canada, but also an issue that plagues all developed countries. A simplified approval process for new construction and alteration, as Bill C-3 suggests, will facilitate the infrastructure renewal.

On the same note, the requirement that the federal government approve new international bridges and tunnels is not new. Every international bridge and tunnel that exists today needed permission from the federal government to be built. That permission was traditionally granted in the form of a special act of Parliament. That fact is reflected in the approximately 50 special acts listed in the schedule to the bill.

Bill C-3 does not change the fact that government permission must still be obtained. It does modify the manner in which the permission is to be given, replacing the need to ask Parliament for a special act with an administrative approval process similar to the presidential permit process that has been in place in the United States since the 1970s.

In committee, we learned that the U.S. presidential permit process is also going through changes. Presidential permits now must be obtained for all substantial modification to these structures and changes in their ownership and operation. The policy underlying Bill C-3 will be more consistent with what our American friends are doing on their side of the border. The department officials further informed us that the process Bill C-3 proposes will also serve to coordinate the various approvals and permits that must be obtained for any new construction, as is the case in the U.S. This new approval process will provide a more streamlined and efficient way to obtain these approvals, an added bonus for regions where the structures are urgently needed.

One of the main differences between Bill C-3 and its predecessor bills, Bill C-26 and Bill C-44, which the Senate did not have the opportunity to review, is the requirement that all transactions and resulting changes to the ownership or operation of the structures are now subject to government approval. It only makes sense that if we are increasing federal oversight powers with respect to maintenance, operation, safety and security of international bridges or tunnels, the federal government should also approve who owns and operates these structures. Under many original special acts, government approval is already needed for sales and transfers. These structures, whether they are owned publicly or privately, serve a public purpose. That is why the federal government should be involved in this aspect, as well as to ensure that they are owned by persons who do not pose security risks, or that do not have the long-term operation of these structures in mind.

Bill C-3 also speaks to the fact that the original legislation does not address modern-day concerns such as safety and security. My committee colleagues will agree with me that no stakeholder expressed concerns with government intervention in this regard. The application of consistent safety and security standards and best practices, as well as the sharing of related information between the international bridges and tunnels and the federal government, will further help protect against safety risks and security threats.

Honourable senators, I will end by saying that any time the government is given powers to intervene in an otherwise unregulated sector, we expect some negative reaction, in particular from those who have been operating without the burden of regulation. It becomes important to review whether those powers are reasonable in the circumstances, and whether they achieve the stated goals so as to be in the best interests of Canadians. In my opinion, Bill C-3 achieves a decent balance taking those factors into account.

Honourable senators, thank you for devoting the time to consider this bill. I encourage senators to pass it.

Senator Oliver: Hear, hear!

Hon. Norman K. Atkins: Would the Honourable Senator Eyton, take a question?

Senator Prud'homme: Of course. Two gentlemen.

Senator Atkins: Does this bill provide the mechanism that will speed up new construction between Windsor and Detroit, or does it slow it down?

Senator Eyton: The bill itself does not provide for acceleration of any particular project, but the process itself should allow for speedier consideration and approval of projects. A number of them are at hand right now.

Hon. Terry M. Mercer: Would Senator Eyton not agree that the retroactivity clause in this bill takes the Ambassador Bridge proposal for a second bridge and makes it now go through this new process, as opposed to just completing the process that they were almost through until this bill was drafted?

Senator Eyton: There is a section in the bill that tries to avoid retroactivity. It excuses any bridge or tunnel that is now operating from the full application of the act.

It is also true that those projects coming on will need to go through the approval process. The committee, in studying the matter, commented on that point in the observations, and will encourage speedy consideration so that the new projects can proceed as quickly as possible.

Senator Mercer: Would Senator Eyton not agree that the witnesses we heard provided some interesting testimony? The mayor of the City of Windsor came to us as the Mayor of Windsor, but as we talked to him, we discovered that he is not just the Mayor of Windsor but is also the chairman of a tunnel and bridge corporation that is publicly owned. Therefore, there was a conflict, because there is competition between the privately and publicly owned bridges.

I wonder whether the honourable senator did not find that testimony sort of curious?

Senator Eyton: That concern was expressed, but I have always taken the view that conflict revealed and transparent avoids much of the problem.

There is a process here. Obviously, it is not just the one individual who will be making the decisions. There is a concerted public interest in ensuring that we have not only the existing structures in place and working, but also new ones in place to provide redundancy and real competition.

All of us are on the same side. The conflict that the honourable senator has identified can be handled.

Hon. Jerahmiel S. Grafstein: Senator Eyton, this may save the Senate time so that I will not have to speak on third reading. I would like to refer to the Senate debates of yesterday. Our learned friend Senator Tkachuk said the following, and I am reading from Hansard at page 1522:

> ... I also want to add that the Minister of Transport has asked me to convey to the Senate that upon passage of Bill C-3 the government will undertake to move as quickly as possible to ease congestion at all of Canada's bridge and tunnel crossings with the United States, particularly at Windsor and Fort Erie.

Later on, I requested an undertaking of him.

• (1440)

This appears on page 1523 of yesterday's Hansard. This is directed toward my honourable friend Senator Tkachuk:

> Would the sponsor of the bill give the Senate of Canada assurance that the Government of Canada is committed to a speedy expansion of border crossings at the Windsor-Detroit and Buffalo-Niagara regions, which would be in the great interest of Canada's productivity and economy?

I ask the honourable senator if he is prepared to repeat those commitments on behalf of the government.

Senator Eyton: The question was posed to me, Senator Grafstein. Senator Tkachuk's answer yesterday was the one word, "Yes." I suppose I can repeat it by saying, "Yes." I also observe there are a number of projects going on now.

The honourable senator's concern is legitimate. I think the government had made the commitment given those projects need to proceed.

Senator Grafstein: In light of those commitments, I understand the complexity of the bill, but I want to reiterate one more time for the government that it is in our national interest to have those two major points expanded as quickly as possible. I understand the private interests. I understand the complex interests. I understand the quandary Senator Mercer has raised. However, in the national interest, it is in our interest to make sure those border points are expanded as quickly as possible.

In light of the government's commitment to do that, which I hope will bind subsequent governments as well, I am prepared to support this bill.

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

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

Motion agreed to and bill read third time and passed.

JUDGES ACT

BILL TO AMEND—THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Nolin, seconded by the Honourable Senator Stratton, for the third reading of Bill C-17, to amend the Judges Act and certain other Acts in relation to courts.

Hon. Mobina S. B. Jaffer: Honourable senators, I rise again to speak on Bill C-17, dealing with judges' salaries and benefits at third reading.

Let me preface my remarks by saying that I do not intend to repeat what I have already said at second reading. Senator Meighen's remarks in introducing the bill largely match those made by Minister Toews before us. What I said on that occasion remains applicable. I would not modify one word of what I said.

When I concluded those remarks, I noted that this legislation was both extremely flawed and well overdue. As one of the members of the Quadrennial Commission on Judicial Compensation and Benefits, Earl Cherniak, Q.C., noted before the Standing Senate Committee on National Finance yesterday, it has now been two and a half years since the commission first issued its report. Our judges have been waiting that long for this legislation to reach the final stage of consideration.

It was this rush that caused us to take the extraordinary step of hearing from the commissioner and the Minister of Justice and Attorney General of Canada back to back before immediately moving to clause-by-clause consideration. While I am glad we were able to expedite this long-overdue piece of legislation, I feel through this bill the government may be causing a great deal of damage to the quadrennial process and interfering unfairly with the rights of Parliament. Worst of all, I fear it is furthering an attack on the rights and rules of our judiciary, which other senators have rightly mentioned is a source of pride for all Canadians and respected the world over.

Much has been said about judges over the course of this debate.

Honourable senators, my mother was a probation officer, and as a young child I used to often accompany her to the courts. I observed the robed judges wearing wigs in the courtroom making very stern and tough pronouncements. Later, I would observe them in their chambers with their wigs on the table, compassionately struggling with what the appropriate sentences should be.

Every Asian Ugandan as long as they live will relate that as long as the judiciary was able to function in Uganda, we were able to live in Uganda. We all have the memory of when our Chief Justice Benedicto Kiwanuka stood up to Idi Amin ingrained in our psyche. He never gave in to Idi Amin.

Justice Kiwanuka lost his life. He was forcibly taken directly from his courtroom by Amin's goons and shoved into the boot of a car. We never saw him again.

In Canada, this great country, we can truly take pride in the independence of our judiciary. Today, they work very long hours due to the increasing number of complicated trials, which involve thousands of documents. They start early to deal with pretrial motions, have a full day in court, and then sometimes have to deal with matters after court hours.

To add to their challenges, they increasingly have to deal with unrepresented claimants, which requires them to undertake the difficult task of being both judge and lawyer in a case.

Only today in *The Globe and Mail* there is a heading: "Judges told to help lawyerless litigants," by Kirk Makin. It reads:

> The growing flood of litigants appearing in court without a lawyer has reached a point where judges should take special steps to help them, the Canadian Judicial Council said in a "statement of principles" released yesterday.

Further:

> "The council views the increasing numbers of self-represented persons who appear in court system as a serious matter," Chief Justice Beverly McLaughlin, chair of the council, said in a commentary.

Honourable senators, in the last few years, we have observed how judges have stood up for what is right.

We have seen it in the Air India case when Justice Josephson took the difficult step of acquitting two people. This was a very courageous act, and he did it because he believed there was not sufficient evidence to convict.

Five years ago, we passed the Anti-terrorism Act, Bill C-36, very quickly. As long as I live, I will remember the words of the then Minister of Justice when she assured us publicly and privately that the legislation was "Charter proof." We believed her. I believed her. We passed the legislation.

Recently, Justice Rutherford in *R. v. Khawaja* struck down parts of the definition of terrorist activity, saying that it is:

> ...not only novel in Canadian criminal law but...constitutes an infringement of certain fundamental freedoms guaranteed in section 2 of the Charter of Rights and Freedoms, including those of religion, thought, belief, opinion, expression and association.

Honourable senators, yesterday, and a few months ago before that, Justice O'Connor returned Maher Arar's life to him by standing up for what was right. He stood up for a lone man and declared that Maher Arar was not a terrorist. Justice O'Connor not only assisted Arar, but a whole community was given hope that in our great country no one is above the law.

Honourable senators, I want to now turn to some of the issues that were raised at second reading. As I said before, I do not believe many of these issues have been addressed and, indeed, the committee members raised a number of new issues in their observations.

One issue I want to put on the record, because I think it is a very important point for many of us here, is the issue that Honourable Senator Grafstein raised at second reading concerning a potential of conflict of interest in the quadrennial commission process. Mr. Cherniak, who had been appointed as the nominee of the judges, was asked the following in committee by Senator Murray — who I quote only in part for the sake of time. Senator Murray asked:

> What would we lose if we changed the membership to exclude a representative of the judiciary?

Mr. Cherniak responded:

> I am not a judge. I have never been a judge, and I do not expect I ever will be a judge, and I have no aspiration to be a judge. I reject the suggestion that I was a representative of the judiciary on the commission. I was the nominee of the judiciary. They have to nominate someone. That is the way the statute reads.

He went on to say:

> The commission is formed by a nominee of the government, a nominee of the judiciary and, to secure the independence of the commission, those two nominees chose the chair. I can assure you that all three members of the commission took the view that they were in no way the representative of the body that nominated them.

• (1450)

Honourable senators, I am satisfied that the spirit of impartiality is being respected in the quadrennial process.

As to another matter that I raised when I spoke earlier on second reading, as to revisiting the decision made by the former government on the salary, Mr. Cherniak's remarks on the process accord entirely with my own assessment. He says:

> I do not think this government can legitimately do what it has done: that is, to revisit the recommendations of the commission two years after the fact and long after the government of the day had already responded.

Honourable senators, the Judges Act clearly states that the government has six months to respond to the report of the quadrennial commission. The limit was respected by the previous government, which accepted the main recommendation of the committee on judicial compensation.

Upon coming to power, the new government said that it would re-examine this response, and ultimately rejected the main recommendation, returning to the original position that is expressed in this bill.

The Justice Minister clearly wishes to avoid the subject altogether. Yesterday, he said:

> Is our government functus because another government made a decision? I prefer not to get into that legal entanglement.

Well, of course he does not. He is wrong.

In response to the question from Senator Cowan on this topic, the minister said:

> The government is required to look at all the facts available to it. I believe there is nothing preventing the government from looking retroactively at what the commission has determined and having the benefit of that insight that has occurred as a result of the passage of time.

With all respect to the minister, it is the Judges Act that prevents them from looking retroactively at what the commission has determined. The timelines are clear. His suggestion that the

government should benefit from the insight gained through the passage of time is especially difficult to reconcile with the spirit of the law. These time limits were meant to ensure that the recommendations of the commission were addressed in a timely manner. When the government says it needs the benefit of over two years of 20/20 hindsight to properly assess the report, it risks causing real damage to the quadrennial process. We now have to wonder how the next quadrennial commission will operate, considering it will be starting its work so shortly after action on the previous commission was implemented.

The minister then intimates that it really does not matter, because the government's position is just a recommendation to Parliament. The minister says elsewhere that his government invited the committee in the other place to make a recommendation. He says that they did not do so because they simply could not agree for one reason or another. He further goes on to say that he does not remember all of the details of the fight. Let me respectfully remind Minister Toews, and this chamber, that there was no fight. When an attempt was made to restore the commission's salary recommendation, the government member chairing the committee simply ruled the motion out of order.

Despite Minister Toews' repetition of the proposition that it is up to Parliament to fix the salary of the judges, he knows that his government has effectively tied Parliament's hands by refusing to commit to a Royal Recommendation should Parliament differ with the government's position.

Parliament's authority is even further usurped by the fact that the Justice Minister has chosen to attach unrelated amendments to other acts to this bill. As our committee points out, this is a clear attempt to tie the hands of parliamentarians, presenting technical amendments with these long overdue changes to the Judges Act and forcing us to accept the whole package. Were it not for time constraints, I might be persuaded to support Senator Joyal's suggestion of splitting this bill into its component parts. However, we learned during the debate on the animal cruelty bill in a previous session that this is a very complicated process, and time simply will not allow it.

As a final point, I am very troubled by the way the justice ministers in our country have started to muse about our judiciary. Yesterday, in committee, the minister was asked about his attitude and some of his statements regarding the judiciary. He responded by saying that he was not the only one, and he gave the example of the Minister of Justice in my province of British Columbia.

The Minister of Justice in my province had commented on the working day of judges. Minister Oppal of B.C. had asked why trials start at 10 a.m. and not at 9 a.m. I know Mr. Oppal; I know Minister Oppal knows the answer to that question as well as I do. His government has cut back court staffing and sheriff services. His government has failed to provide pre-trial holding facilities in downtown Vancouver. Prisoners, who must be present at their own trials, must be brought in from the Fraser Valley every morning, and they seldom arrive in time. Judges cannot start trials earlier than 10 a.m. in Vancouver because government cutbacks have made it impossible for them to do so.

I should also point out that I know, and I know Minister Oppal knows, that notwithstanding these difficulties, superior court judges start their working days early and are often in their courtrooms by 9 a.m. on motions and other civil matters. Minister Oppal also knows that judges' sitting time is only a fraction of their working time. Every week, dozens of considered written decisions are posted on the court website. They do not come out of thin air, and they are not prepared while judges are sitting in court. Judges spend many evenings and weekends at work.

It is unfortunate that Minister Toews seems to take some comfort in this unfortunate incident, but it is not surprising. I will make one more observation that sums up Minister Toews' attitude, and that of this government toward our judiciary. In answer to a question from Senator Cowan, Mr. Toews said this:

> I think despite the fact that the Supreme Court of Canada outlined this process for the commission to make these determinations, it must be remembered that this was a process that has been somehow constitutionally grafted into our Constitution. It does not appear anywhere in the same way that section 100 does in the Constitution Act, 1867. Section 100 of that Act clearly indicates constitutionally that it is the responsibility of Parliament to set that compensation so we have to then meld the constitution doctrine imported into this whole process by the court in the Prince Edward Island Judges' Reference Case and as defined in the *Bodner v. Alberta* decision.

The process was not "somehow constitutionally grafted" into our constitution. Honourable senators, the issue of the responsibilities of legislatures was submitted to the courts in those cases. The courts were simply doing what they were constitutionally obliged to do in interpreting those responsibilities.

As I said in my remarks at second reading, section 100 imposes a responsibility upon Parliament to fix judicial remuneration —

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

Senator Jaffer: May I have two minutes?

Hon. Senators: Agreed.

Senator Jaffer: — at a level which appropriately reflects the crucial place of the courts in our democratic system. Section 100 is not an unfettered prerogative. That is all the courts have said.

I am very reluctantly agreeing to support this bill. We, of course, cannot change the percentage increase in this house as it is not within our powers.

Honourable senators, today, in my presentation, I would be remiss if I did not acknowledge another great jurist, former Supreme Court Justice Thomas Dohm. When I first came to this country as a refugee, in my first month I was flatly refused by the Law Society of British Columbia when I asked them to assess my credentials as a lawyer. I was very fortunate, at that time in 1974, that a great jurist, Tom Dohm, came to my aid. I have been working for him for the last 30 years. Honourable senators, I am here with you today because of the work of that great jurist, Tom Dohm, who took on the law society in my province. Judges truly work for all Canadians; Canadians from all walks of life. We Canadians should be very proud of them.

Therefore for me, this is not a happy day. The process for fixing judicial remuneration has not been respected by this government. However, we must nevertheless support the immediate passage of this bill because we recognize that even more harm can come from any further delay.

• (1500)

Hon. Jerahmiel S. Grafstein: Honourable senators, again I beg your indulgence. I happen to have been a critic of both the Bridges and Tunnels Act and the Judges Act, and I would like to conclude my comments by covering some of the ground that we discussed yesterday, and that the previous speaker just commented on.

Let us start with this: Justice delayed is justice ignored. Just as we ask judges for justice without delay, so we must be just to judges in giving them their timely compensation. Our quandary, however, is the process. The Judges Act and this amendment to it beg serious questions. I intend to return once again to the Constitution, because it makes absolutely clear that judges' compensation is a question for Parliament. This is not contested. I listened carefully to the arguments made by other senators about the judicial precedence dealing with judicial compensation, but on a fair reading of it, there is no question at all that Parliament is supreme when it comes to judicial compensation.

However, it is clear that, over the years, judges have become frustrated by the delays in their compensation and they were very unhappy with the process of adjudging their compensation, and so they sought to intervene in their own courts by judicial precedent.

Let me turn to a recent article by an outstanding legal scholar to again give the Senate a flavour of this issue and how the court, on the one side, and legal commentators, on the other side, have thought about this issue. This is a brief article written by Professor Jacob Ziegel of the University of Toronto Law School.

Again, I want to state my conflict of interest. I came from that esteemed institution. Having said that, I quote Professor Ziegel's comments with great interest, and I think they will be of interest to the Senate.

The title of the article is *Judicial Compensation Review, Light at the End of the Tunnel?* He says:

> In 1998, the Supreme Court of Canada decided in the *Prince Edward Island Reference* case that the federal and provincial governments were obliged to establish independent commissions to make periodic recommendations with respect to the salaries, pensions and other benefits to be paid to federally and provincially appointed judges. The Court justified its novel interpretation of the Canadian constitution on the ground that independence of the judiciary was a cornerstone of Canada's legal system. Accordingly, judges could not engage in salary negotiations with federal and provincial governments without appearing to compromise their impartiality in cases to which the Crown was a party.
>
> Chief Justice Lamer made it clear in the course of his majority judgment that governments were not obliged to accept a commission's recommendations, but that if a government elected to reject the recommendations it had to give reasons for its decision and that the decision could be challenged in court. If it was challenged, the test of the reasonableness of the decision was one of "simple rationality."
>
> That inner tension in the Supreme Court's judgment in the *P.E.I. Reference* case laid the groundwork for a flurry of court cases from coast to coast challenging the validity of provincial government decisions not to implement all or part of a commission's recommendations. The litigation reached a crescendo in four consolidated appeals from New Brunswick, Quebec, Ontario and Alberta that argued before the Court last fall.

This is a current argument, so that means this last fall.

> The key issue in all four cases was when a court is entitled to reject the reasons given by a government for refusing to implement a commission's recommendations. The Court's unanimous judgment rendered this July is a major setback for the strategy successfully employed by the aggrieved judges before the lower courts and a major victory for provincial governments.
>
> The Supreme Court adopted a three-part test to determine whether a government's refusal satisfies the test of rationality. None of them are difficult to meet. Even more important was the Court's emphasis that the allocation of public funds is governmental responsibility, not the courts'. So far as the present appeals were concerned, the Court found that out of the four challenged refusals only the Quebec government's reasons failed to pass the rationality test. However, even in Quebec's case, the Court made it clear that the Quebec courts were not entitled to give effect to the Commission's recommendations because they weren't satisfied with the Quebec government's reasons. The correct remedy, the Supreme Court ruled, was for the court hearing the case to ask the nonconforming government to give further and better reasons for its decision. (The Court did not explain what the result would be if the respondent government gave a second set of inadequate reasons.)

He concludes by saying:

> The federal and provincial judges' associations probably feel that the Supreme Court's pronouncement in the current cases has undermined the Court's 1997 judgment. My own view is that the Court corrected the false impression left by an earlier judgment and that it was right to resile from a position that appeared to make the courts judges in their own cause and led them into direct conflict with the federal and provincial governments in a particularly sensitive area of public policy.

Honourable senators, I generally agree with that statement, and it strikes me that we do have a light at the end of the tunnel.

Let me now turn to the excellent work done by the finance committee under the chairmanship of Honourable Senator Joseph Day. Last night, I read the transcript in full. I ask all senators who are interested in this question to read the transcript. Some of the points they will be interested in and some they will find intriguing.

I want to start with the comment by my learned friend Earl Cherniak, in response to a question asked. This appears on page 6 of the transcript of the Standing Senate Committee on National Finance, Tuesday, December 12. Remember, Mr. Cherniak's position is that he is a nominee of the judges; that he is there in his own capacity. I think yesterday honourable senators heard my argument about that. If he is there in his own capacity and does not represent the judges, why is it necessary for the judges, notwithstanding the mandate of the commission, to nominate a judges' representative?

Mr. Cherniak said:

> It is also important, in my respectful submission to this committee and to Parliament, that Parliament clear the air and reaffirm the integrity of the commission process to remove judicial compensation from the political arena.

He goes on to say this:

> The removal from the political arena is constitutionally mandated and necessary for all the reasons set out in the *P.E.I. Reference* by the Supreme Court of Canada. Otherwise, there is a real danger that the current carefully crafted process, enacted by Parliament in 1999 in response to the failures of the earlier reports, will go the way of the failed triennial commissions, will breed cynicism in the judiciary and the public and will compromise the credible constitutional and democratic principle of an independent judiciary.

I think that that is a brilliant statement, and I disagree with it. I think that Parliament is Parliament. If it is a political process, it is a political process. If the Fathers of Confederation decided that Parliament should opine on this, so be it. I understand the artful nature of his response, but I thought it was important, for the purposes of this debate, to generally and respectfully disagree.

I hope that the government will now, having in mind this debate, finally re-examine the makeup of the quadrennial commission — that is four years away. It will happen again next fall. There is ample time — and in the process, that they examine the best practices of the United Kingdom, Australia and the United States, which essentially establish truly independent commissions to give advice, and also apply it across the board for other public servants. I would hope that they would look at this situation and come forward with a new commission that, to my mind, is free of any question at all about judicial participation. There is no question at all in my mind that judges are entitled to make recommendations to that commission, but I think it would be a fair and more independent process.

• (1510)

I want to turn to my friend Senator Nolin. I thought he was very gracious when he offered to the Senate to change the compensation of judges. I was tempted to stand up and accept that, because I feel that judges must be properly compensated. I am not satisfied with the rationale given by Mr. Toews, but he was careful and succinct. I do not want to question the public purse because we do not have access to all the ramifications of the public purse. Prima facie, we are in surplus, and an extra $33 million to the judges, in this day and age, will not set an unreasonable precedent.

Having said that — and I say this kindly to my respectful friend Senator Nolin — this chamber, notwithstanding this very tantalizing offer, cannot accept it. We cannot accept it because we are constrained by our constitutional limits. We can vote this bill up or we can vote this bill down, but we cannot increase this bill because we are not a money house. I say to him notwithstanding that grand offer, had that grand offer been made to the other side they could have accepted it but we unfortunately cannot. However, I thank him very much because I think it indicates to him the generosity of spirit we have shown on this particular measure.

I will turn to another equally troubling practice that troubled all members of the committee. I am troubled by it as well, and when I read the transcript it troubles me even more. It is this practice that has been partially defended in this house about sticking things in legislation that have no place in the particular legislation. I looked at the comments of Senator Cowan and Senator Fox. I looked at the chairman's comments about this and I could sense in the questions — and they were very astute questions — how unhappy they were that the Department of Justice and the Minister of Justice had taken this opportunity to put things in this bill that should not be in this bill. I notice senators nodding with approval. No one is comfortable with this bill. Let me turn again to the transcript because this is really troublesome. I will be brief.

Honourable senators, it is at page 86. This is great midnight reading by the way. This is the Justice official and here is what was said about mixing apples and oranges in this particular bill. Ms. Bellis responds to a very learned question by Senator Cowan. Senator Cowan asked:

> I heard the minister say that there were substantive amendments which could not be brought in through the amendment act to which Senator Fox referred.

Again, Senator Fox opined on the same question so both were on the trail of this question.

> You referred to them as technical amendments.

Here is what Ms. Bellis said, on page 86 of the transcript:

> The policy of the legislative drafting session treats the use of the Miscellaneous Statutes Amendments Act in a very narrow way.

By the way, I concur with that and I think we all concur with that.

> Anything they think parliamentarians might have a question about, even if it is a technical one which might be rendered to have a policy aspect to it, they will essentially tell us no, you have to find a vehicle that will go through the full legislative process.

We agreed with that. There is no question about that.

Later she says, again in response to Senator Cowan:

> This is a good example, senator. This is a technical amendment that essentially clarifies a matter that was not specified in the act, which established the tax court as a superior court. That was Bill C-30 which created the Courts Administration Services Act.

Then she goes on to say:

> While it is technical, someone asked are you changing the nature of what a person needs in terms of a procedure? It is not judicial review, it is now appeal. Someone might want to ask the question.

Again, Senator Cowan questioned that, and this goes on and finally we find, I think a brilliant interjection by Senator Rompkey, who always gets to the point. Here is what Senator Cowan said:

> It has nothing to do with judges' salaries. These are not amendments which are consequential to adjusting salaries or benefits for judges.

We all agree, those amendments, those things had nothing to do with this act, and then Senator Rompkey, from the learned province of Newfoundland, says, in his astute way, "bootlegging."

Senator Cowan repeats:

> Bootlegging. That is the term I was looking for. Leave it to a Newfoundlander to come with up with the right term. It is not a term that is familiar to us in Nova Scotia.

I am not sure I agree with that statement.

Having said all that, I think we have made an outstanding case to the Department of Justice, so I say this: The hour is late, justice delayed is justice denied. Judges are entitled to their equity. We will give them their raises. We are not satisfied with their raises, but we will give them their raises, honourable senators, and I point to the government benches because we have been on the opposite side and we have heard it from our government, so I say to you on your side, this act is simply bad legislative practice. It is bootlegging bad.

The other place is noted for its careful scrutiny of legislation. We know that. In this instance somehow they missed. They did not say a word about one half of this act. Yet, what are we to do? What are we to do in these circumstances? I will support this bill because of the equity to our judges but I trust that the Minister of Justice and the Department of Justice and the senior legal advisers will not perpetuate this bad, bad practice.

Senators will be here, senators will wait, senators will watch and we will push back any future attempts to give us sloppy, unhappy, bad legislation. We are not in favour of bootlegging in this chamber.

Finally, in conclusion, I cannot fail to use this opportunity to talk about *ex cathedra* comments by judges. There are two schools of judicial *ex cathedra* statements where a judge takes his or her robe off and speaks to the public. I say, honourable senators, that I am from the Laskin school, and the Laskin school says that judges speak through their cases. I am not of the John Sopinka school. The late John Sopinka, a very distinguished Supreme Court judge passed away a few years ago, a very untimely death. A classmate, my law school companion and friend, he disagreed with me. He felt that judges had a right to speak out. I gave him book and verse of the long history of the idea that if judges are to be a place apart, offered immunity and provided a special place in our society, they are to speak through their cases. I want to thank all honourable senators for their indulgence and patience. I support this legislation.

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

Some Hon. Senators: Question!

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

Hon. Senators: Agreed.

Hon. Mira Spivak: Honourable senators, I simply want to be recorded as abstaining on this motion.

Motion agreed to and bill read third time and passed.

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).

Hon. Charlie Watt: Honourable senators, I rise here today to speak to Bill S-4, which was referred to a special committee to study the subject matter. This bill proposed an eight-year term for future senators.

The committee was empowered to undertake to study and consider if the bill is constitutionally sound and does not require provincial consent. The amendment is the first stage of a more extensive reform leading to the process of selecting senators. Similar to the other complex institutions, each element interacts and relies on others. It is neither democratic nor realistic to reform the Senate piece by piece. If the honourable senators looked at the eight-year term proposition as a stand-alone measure, one does not need provincial consent, according to what we heard from the witnesses.

• (1520)

The Hon. the Speaker: I apologize for interrupting the Honourable Senator Watt, but the table advises the chair that he has already spoken on this bill. He may want to seize the opportunity to speak on the report, which comes a little later.

Senator Watt: Thank you.

On motion of Senator Cools, debate adjourned.

[*Translation*]

INFORMATION COMMISSIONER

MOTION TO APPROVE APPOINTMENT OF MR. ROBERT MARLEAU ADOPTED

Hon. Gerald J. Comeau (Deputy Leader of the Government), pursuant to notice of December 5, 2006, moved:

> That in accordance with section 54 of the *Access to Information Act*, Chapter A-1, R.S.C. 1985, the Senate approve the appointment of Robert Marleau as Information Commissioner for a term of seven years.

Motion agreed to.

[*English*]

THE ESTIMATES, 2006-07

INTERIM REPORT OF NATIONAL FINANCE COMMITTEE ON MAIN ESTIMATES ADOPTED

The Senate proceeded to consideration of the sixth report (second interim) of the Standing Senate Committee on National Finance (Estimates 2006-07), presented in the Senate on November 29, 2006.

Hon. Joseph A. Day moved the adoption of the report.

He said: Honourable senators, this is the report that I referred to yesterday when I spoke on Bill C-17 dealing with judges' compensation. This is the background study that was done by the Standing Senate Committee on National Finance. It is entitled *Provisions to Safeguard the Independence of the Judiciary and the Determination of Judicial Compensation and Benefits*. It provides a very good background on federal judicial affairs and the various committees and commissions that relate to our judiciary.

There are no recommendations in this particular report, honourable senators. It was intended for background information. I believe it does provide that and was helpful with respect to moving Bill C-17 through this chamber. I would respectfully request your support in adopting this report.

Motion agreed to and report adopted.

CONSTITUTION ACT, 1867

BILL TO AMEND—REPORT OF SPECIAL COMMITTEE ON SUBJECT MATTER—DEBATE CONTINUED

On the Order:

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

Hon. Charlie Watt: Honourable senators, I rise today to speak to Bill S-4, which was referred to the Special Senate Committee on Senate Reform to study the subject matter. This bill proposes an eight-year term for future senators.

The committee was empowered to consider if the bill is constitutionally sound and does not require provincial consent. This amendment is the first stage of a more extensive reform leading to a process to select senators. Similar to other complex institutions, each element interacts and relies on others. It is neither democratic nor realistic to reform the Senate piece by piece.

If honourable senators look at the eight-year term proposition as a stand-alone measure, one does not need provincial consent, according to what we heard from the witnesses. This opinion could be different if we look at the bill with a future process that is not yet known. As such, for any clear judgment to be made on Bill S-4, we need a complete picture of the statement made by the Prime Minister indicating an upcoming bill.

During the course of examination, an important Aboriginal concern came to light with a helpful comment made by Senator Dawson, who discovered that Nunavik, a region comprising the northern tip of Quebec, is not in a senatorial district and so its inhabitants are not legally represented in the Senate. The reason for this is Nunavik was not officially part of the province of Quebec when Senate seats were allocated in 1867. While the boundaries of Quebec were extended in 1912 to include the territory of Nunavik, it is clearly unacceptable that still today, 100 years later, Nunavik is not legally represented in the Senate.

Honourable senators, this is a question of democracy. What will happen when senators are elected? Will the inhabitants of Nunavik be eligible to be senators?

All honourable senators understand the paramount concern is to ensure that all Canadians are represented in the Senate. This is an essential characteristic of the upper chamber.

Disregarding Nunavik would be contrary to the reasons on which the Bill S-4 is based. As advocated by the Prime Minister, such reform will make the Senate more democratic, more accountable and more in keeping with the expectations of Canadians who, as we all know, are not all satisfied with the status quo. He emphasized that Canada needs an upper house that gives voice to our diverse regions. Canada needs an upper house with democratic legitimacy, and I hope we will work together to move towards that enhanced democratic legitimacy.

Honourable senators, we cannot go further with this bill before we find a means to ensure that Nunavik is represented. We do not know the consequences without knowing what this legislation will bring. Will it be a process of selection or election?

One concern I have with Bill S-4 is the lack of transitional provisions. As we all know, the purpose of this bill is to limit new senators to eight-year terms, while current senators will continue to be subject to the mandatory retirement age of 75. This requires an in-depth examination.

In my opinion, the future process to select senators or use other means will probably require a constitutional amendment with the consent of the provinces. Despite what we heard from the witnesses at the committee, I came to the conclusion that it would require provincial agreement. We can assume that such negotiations, if negotiations take place, will take many years. The problem is that, at the same time, the democratic representation

of the Senate will dramatically shrink through retirement over the next few years. This transitional problem is a matter we need to address.

Let me stress again how important it is to have a complete picture before we can proceed with Bill S-4 on the basis of stand-alone legislation.

The Speech from the Throne stated that the government was committed to explore means to ensure that the Senate better reflects the democratic values of Canadians and the needs of Canadian regions. This is, to me, a piecemeal, incremental, step-by-step approach to Senate reform that will lead us to unknown consequences. There is a strong enough indication that Bill S-4 is much more than stand-alone legislation.

I do have sympathy towards the provinces that are not represented according to their current population, and we need to address this issue. However, now, as you know, I am, in the Senate, defending my people, and I do not even legally represent them. This is my first priority.

Honourable senators, first, we should not proceed until we have a clear idea of the upcoming, closely related piece of Senate reform the Prime Minister is embarking upon. Second, we should not proceed until Nunavik is legally represented in the Senate. Finally, we should not proceed with the bill without transitional provisions to maintain the democratic characteristic of the Senate.

• (1530)

Honourable senators, for those reasons, I propose that the bill itself be suspended until we see the next bill from the House of Commons concerning the process to select senators. In my opinion, this is the logical and reasonable thing to do.

Honourable senators, I would like to go a step further and make mention of a press release today from the Prime Minister's Office. I would like to put it on the record. The heading states, "Prime Minister moves forward on Senate reform" and reads as follows:

> Prime Minister Stephen Harper has announced that Canada's New Government will introduce a bill in the House of Commons today to establish a national process for consulting Canadians on their preferences for Senate appointments. The bill will see voters choose their preferred Senate candidates to represent their provinces or territories.

Here, honourable senators, the Prime Minister is stating the fact this proposed legislation will be for the provinces and the territories.

> "This bill will make the Senate more democratic and more accountable," said Prime Minister Harper in a speech to his caucus. "For the first time, it will let the Prime Minister give Canadians a say in who represents them in the Upper House."
>
> The Senate Appointment Consultations Act represents another step in a comprehensive plan to make government more accountable. The Prime Minister noted that the bill was being introduced the day after the government's Federal Accountability Act received royal assent. Canada's New Government has also introduced legislation to limit Senators' terms to eight years.
>
> Details about this new bill will be released when it is introduced in the House of Commons later today.

Honourable senators, that press release reinforces what I am saying here. We cannot look at this issue on a piecemeal basis. This proposed bill is important enough for us to take into consideration along with what has been tabled up until now.

On motion of Senator Fraser, debate adjourned.

[*Translation*]

FIRST NATIONS GOVERNMENT RECOGNITION BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator St. Germain, P.C., seconded by the Honourable Senator Segal, for the second reading of Bill S-216, An Act providing for the Crown's recognition of self-governing First Nations of Canada.—(*Honourable Senator Comeau*)

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I move that the bill be read the second time.

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Comeau, bill referred to the Standing Senate Committee on Aboriginal Peoples.

[*English*]

NATIONAL CAPITAL ACT

BILL TO AMEND—SECOND READING

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-210, to amend the National Capital Act (establishment and protection of Gatineau Park).—(*Honourable Senator Comeau*)

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

Hon. Senators: Question!

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Spivak, bill referred to the Senate Standing Committee on Energy, the Environment and Natural Resources.

[*Translation*]

PARLIAMENTARY EMPLOYMENT AND STAFF RELATIONS ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill S-219, An Act to amend the Parliamentary Employment and Staff Relations Act.—(*Honourable Senator Comeau*)

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, some very important questions are raised by this bill. I am certain that we would not wish to miss an opportunity to discuss it in this chamber. I move to take the adjournment of the debate.

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

Some Hon. Senators: Agreed.

On motion of Senator Comeau, debate adjourned.

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, An Act concerning personal watercraft in navigable waters.—(*Honourable Senator Comeau*)

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, some very important questions are raised by this bill. Senator Angus plans on speaking at length on this bill tomorrow. I always enjoy listening to Senator Angus when he speaks. I move to take the adjournment of the debate.

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

Some Hon. Senators: Agreed.

On motion of Senator Comeau, debate adjourned.

[*English*]

CONSTITUTION ACT, 1867

REPORT OF SPECIAL COMMITTEE ON MOTION TO AMEND—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Fraser, for the adoption of the second report of the Special Senate Committee on Senate Reform (motion to amend the Constitution of Canada (western regional representation in the Senate), without amendment but with observations), presented in the Senate on October 26, 2006;
>
> And on the motion in amendment of the Honourable Senator Tkachuk, seconded by the Honourable Senator Campbell, that the second report of the Special Senate Committee on Senate Reform be not now adopted but that the motion to amend the Constitution of Canada (western regional representation in the Senate), be amended as follows:
>
> (*a*) by replacing, in the third paragraph of the motion, the words "British Columbia be made a separate division represented by 12 Senators;" with the following:
>
> "British Columbia be made a separate division represented by 24 Senators;";
>
> (*b*) by replacing, in clause 1 of the Schedule to the motion, in section 21, the words "consist of One hundred and seventeen Members" with the following:
>
> ''consist of One hundred and twenty-nine Members";
>
> (*c*) by replacing, in clause 1 of the Schedule to the motion, in section 22, the words "British Columbia by Twelve Senators;" with the following:
>
> "British Columbia by Twenty-four Senators;";
>
> (*d*) by striking out, in clause 2 of the Schedule to the motion, in section 27, the words "or, in the case of British Columbia, Twelve Senators,"; and
>
> (*e*) by replacing, in clause 2 of the Schedule to the motion, in section 28, the words "exceed One hundred and twenty-seven." with the following:
>
> ''exceed One hundred and thirty-nine.''. —(*Honourable Senator Murray, P.C.*)

Hon. Lowell Murray: Permit me to say, first of all, honourable senators, that Senator Austin and I have put forward a motion in the spirit of and, we believe, in the Canadian tradition of honourable compromise to solve a serious and potentially divisive problem.

Happily, the speeches that we heard in this debate on Monday night by Senator Hubley and Senator Tkachuk served to place in stark relief two quite contrasting or opposing perspectives on the problem and on this motion.

Happily also, in my submission, the speeches that we heard from our friends Senator Hubley and Tkachuk also, in their way, pointed out the need for honourable compromise. I submit it also pointed out the merits of the compromise that Senator Austin and I are proposing to the Senate.

To take the second speech first, Senator Tkachuk argued, as had Senator Carney, some days before, that the proposal of Senator Austin and I does not go far enough. Instead of the additional 12 seats in our amendment, they would add 24. To that, I would say that this motion, the Austin-Murray motion, if it passes would not be the end of a process, but rather the beginning.

• (1540)

Senator Austin and I wanted to put forward the formula that we believed had the best chance of passing the first test in that process, namely the approval of honourable senators. Then, there will be ten provincial legislatures and the House of Commons to be heard from in the amending process. Senator Austin and I have said from the beginning that if another, different consensus emerges among those 11 other players in favour of a different formula to achieve the same objective, we would defer to it and ask the Senate to do so. However, we wanted to submit a formula that honourable senators would consider fair, equitable and reasonable. We want to get a process started, and we do not want it stopped in its tracks in this place. We do not want to court failure in the Senate on a matter of substantive and symbolic importance to Western Canada and, therefore, to national unity.

Senator Hubley and others are understandably concerned lest an increase in western representation unduly weaken their province or region in the Senate. I believe that our proposal goes some way to correct the imbalance from which Western Canada suffers with minimum adverse consequences for any other region. British Columbia would rise to 10.3 per cent of this chamber; Alberta to 8.5 per cent, from 5.7 per cent as at present; Quebec and Ontario would each lose a little over 2 per cent of their weight; the Atlantic provinces would lose 3 per cent of their weight, collectively, but would still be at 25.5 per cent of the Senate, which is considerably more than any other region. I submit that the cost of these changes to the other regions is very small compared to the size of the imbalance that we are trying to correct, and compared to the relative improvement in the representation of the West.

I spoke of the Canadian tradition of honourable compromise, on which this motion is being offered. We know that the Senate exists because of a compromise achieved in 1867 — the need to address the concerns of Quebec and the Maritimes that they would always be outnumbered in a House of Commons based on representation by population. We must recognize, however, that over the years the principle of representation by population in the House of Commons has, in practice, been compromised, and substantially so in the interests of the smaller provinces and to their benefit.

In 1915, as Senator Hubley reminded honourable senators on Monday night, the so-called "Senate floor" was brought in, which provides that no province can have fewer seats in the House of Commons than it has in the Senate. The provision, which could only be changed by a constitutional amendment, now gives four provinces nine seats in the Commons that they could not have under real representation by population. In 1985, a Representation Act was passed that further dilutes the principle of representation by population in the Commons. That act, which could be changed by Parliament acting alone, gives five provinces 18 seats that they would not have under real representation by population. Together, the 1915 Senate floor and the 1985 grandfather clause give seven provinces 27 seats that would not exist in the House of Commons if the principle of representation by population were fully respected.

The proportion of seats in the Commons held by British Columbia, Alberta and Ontario is smaller, as a result. Let me add that it is to the credit of Parliament and of our country that those changes to representation by population, although they represent dilution of a key democratic principle, did not set off an acrimonious and divisive debate in which Canadians and their parliamentarians took sides as so-called "winners" and so-called "losers." Those MPs and senators from British Columbia, Alberta and Ontario who had to face a dilution of their province's weight in the Commons were persuaded, nevertheless, of the need to compensate for certain historical, economic or political disadvantages facing other parts of the country, and they accepted those compromises and others in the interests of harmony, reconciliation and the greater good of Parliament and the country. At no time did those MPs and senators from Ontario, British Columbia and Alberta treat Confederation as a zero sum gain in which a little gain for one part must always mean a loss for somebody else. That was not their attitude.

It has been thus with most of the compromises — I would say with all of the compromises — that we and our predecessors in Parliament have had to make for the greater good of Canada. The accommodation of religion, language and culture was at the heart of the 1867 compromises, of which parliamentary bicameralism was as vital a part as the division of legislative powers between the two orders of government. The Official Languages Act and the language and education provisions of the Charter made those concepts a reality for our time. Multiculturalism came later. Equalization is in the Constitution not only because the Atlantic provinces pressed for it but also because one of its strongest provincial supporters was former Premier Peter Lougheed of Alberta. The 1982 amending formula was a huge compromise, as was the notwithstanding clause in the Charter of Rights and Freedoms.

[*Translation*]

Honourable senators, we must no longer tolerate the imbalanced representation of the Western provinces, particularly British Columbia and Alberta, in this chamber. It is simply indefensible, and you will have noticed that, during this debate, no one has attempted to justify maintaining this imbalance.

Put yourself in the place of a Canadian citizen in British Columbia or Alberta. How could you look with confidence and without frustration at one of your so-called national, federal, parliamentary institutions where you are so clearly under-represented? The fact is that the Senate has and will continue to have very little credibility in the West as long as this injustice persists. That is why I am asking you to take the

initiative in the Senate to rectify this situation. We have the right, the responsibility and the opportunity to set the amendment process in motion ourselves and to propose a reasonable, equitable solution to our colleagues in the House of Commons and the provinces.

We all know how pointless it would be to wait for megaconstitutional negotiations with multiple agendas.

The beauty of Senator Austin's motion is that it has only one objective: to correct the under-representation of Western Canadians in this chamber. Our partners in the other place and the provinces will be able to debate our amendment without worrying about how it affects other constitutional issues.

[*English*]

The motion that Senator Austin and I have placed before honourable senators would have the Senate take the lead in proposing a relatively small compromise to correct a large inequity in our chamber. There have been good speeches in this debate and valid concerns expressed. However, none of us could deny the existence of a serious imbalance in this house or defend its continuance, not in any debate in British Columbia, Alberta or anywhere else; not in any debate where fairness is the issue; and not in any discussion of the purpose of the Senate in our parliamentary and federal system.

I do not know what the fate of this motion might be in the House of Commons or in any provincial legislature. I am certain that it will be to senators' honour and credit that the Senate took the initiative to redress a long-standing regional inequity and, in so doing, reinforce its authority, authenticity and credibility as a truly national institution.

Hon. Daniel Hays (Leader of the Opposition): Honourable senators, if time permits, would Senator Murray take a question?

Senator Murray: Yes.

• (1550)

Senator Hays: By way of comment, I congratulate the honourable senator on a well-reasoned and compelling speech that I find convincing. He mentioned the Canadian compromise and the history of our country. We are reluctant to make constitutional changes, particularly as it relates to the institutions of governance. Our history tells us that loud and clear.

In the area of sharing of powers, we have found ways around the rigidity of the allocation of powers under the Constitution Act, 1867 — sections 91, 92 and so on.

In the area of institutional reform, we have not been so successful. Basically, in the case of allocation of powers, we create shared powers where none are provided for in a formal way, and create possibly conventions, in the case of health care and others.

In this difficult area, the motivator for the compromises in those areas have been political imperatives — unhappiness in a region about this, that or the other thing, a desire on the part of the federal government to ensure it has a role to play in postsecondary education, social programs, health care and so on. However, in the case of institutional change, I am not aware of any history like that.

What Senator Murray proposes, seconded by Senator Austin, is an example of where we might go. I think it is a very good proposal and, hopefully, one that we will follow no matter what might happen to the resolution after it leaves this place.

The honourable senator is an experienced minister in intergovernmental matters. I would appreciate it if he would comment on how this might play out, after approximately a century with no change, in the absence of what it is that he and Senator Austin propose we do, namely, reach out at this time with a compromise, which is very much in the Canadian tradition.

Senator Murray: I do not know whether this is addressing the question directly; perhaps it is. As I said when I opened debate on this matter last June, this regional inequity stands out to me as a serious flaw in the Senate that can be addressed on its own through the constitutional process. What we are suggesting here will take the House of Commons and seven provinces, representing 50 per cent of the population. Because it is such a serious flaw, it undermines the credibility of other attempts, including those being made by the present government, on matters having to do with tenure and, it appears today, with the method of selecting senators. I think the status quo, in terms of representation, is an almost fatal flaw so far as the Senate is concerned in parts of your region — in Alberta and British Columbia. It is something that we can solve if there is a willingness to compromise, not just in this chamber but outside this chamber.

Hon. Jack Austin: May I address a question to Senator Murray?

The Hon. the Speaker: I must first remind the house that Senator Murray's time has been expended. Do you wish to seek an extension?

Senator Hays: Agreed.

The Hon. the Speaker: Is leave granted for five minutes?

Hon. Gerald J. Comeau (Deputy Leader of the Government): Agreed.

Senator Austin: First, I would like to express my appreciation for your interest, support and dedication to alleviating this grievance. This is particularly appreciated because you are a Maritimer, even a Cape Bretoner, which is —

Senator Murray: Representing Ontario.

Senator Austin: Exactly. You show a very pan-Canadian spirit in the work you have done. I thank you for an excellent presentation.

I have said in this chamber, and others have said in this chamber — but I do not think it is appropriately appreciated — that there can be no constitutional change so far as British Columbia is concerned until there is a resolution of the Western representation issue. Premier Campbell has made that clear. He has even said that British Columbia should have 20 per cent of the seats in the Senate.

It may serve some to prevent any constitutional changes through the 7-50 formula. I can only speculate that might be the case. However, the question to you is given your constitutional experience — which is extensive, recalling the constitutional proposals of the Mulroney government — do you believe there will be the possibility of constitutional movement in this country in the next five to 10 years without resolving this issue?

Senator Murray: Honourable senators, I think it can be argued — and I probably made the point myself in the past — that it appears we are in a state of constitutional deadlock, except for those amendments we have been able to pass through the bilateral formula with Quebec and Newfoundland and Labrador.

There are various impediments to constitutional reform, one of which has been identified by Premier Campbell and cited by Senator Austin. The other outstanding issue is the fact that Quebec has not signed on to the 1982 Constitution.

I would like to test the proposition that nothing can be done until these impediments are removed. That is one of the reasons I would like to see the Senate pass this motion to amend. If it goes through the Senate, as you know, it will be sent to 10 provincial legislatures and to the House of Commons.

We may find that depending on the issue, there is more of a disposition than we had suspected — and, indeed, that had existed 10 years ago or more — to make a constitutional amendment where one was manifestly in the national interest. That might inspire some serious thinking about the other impediments, including the Quebec issue and others that we know of, that have to be addressed sooner or later — and, hopefully, not in a crisis atmosphere.

Senator Austin: Would it be fair to say that one of the major premises of this resolution is to find an opening, through the development of constitutional negotiations, for the larger constitutional process to be validated again in the Canadian format?

Would it be fair to say that the idea that was advanced, among others by Senator Hubley, that we can only have a global Cartesian review of all issues before we deal with any constitutional measure, would create an indefinite deadlock?

Senator Murray: That is what I was trying to say. I appreciate the point, and have made it myself, that in terms of reform of the Senate, there are some aspects that, in my opinion, one should not proceed with on a one-off basis because they are closely interrelated. That is to say the relationship of the Senate with the House of Commons, the powers of the Senate, the term of senators — all these things are very closely related.

I think we could make a contribution to addressing these other matters if we were able to make progress with this issue itself, which could be considered by provinces and the House of Commons without worrying about its impact on other constitutional issues.

The Hon. the Speaker: Senator Murray's time has been exhausted.

On motion of Senator Bryden, debate adjourned.

• (1600)

HERITAGE LIGHTHOUSE PROTECTION BILL

REPORT OF COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the fifth report of the Standing Senate Committee on Fisheries and Oceans (Bill S-220, to protect heritage lighthouses, with amendments), presented in the Senate on December 11, 2006.—(*Honourable Senator Rompkey, P.C.*)

Hon. Bill Rompkey: Honourable senators, I move the adoption of this report.

I rise to fulfil my obligation under rule 99, which provides that:

> 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.

As honourable senators know, this bill has a long history. Our late colleague Senator Forrestall worked tirelessly for it, and this is no less than the sixth occasion on which it has been before the Senate. At times, committees have passed the bill without hearing any witnesses at all, and indeed, during the third session of the 37th Parliament, it passed the Senate without referral to a committee.

Honourable senators, this latest version of the bill was referred to the committee on Tuesday, November 28, and last Thursday we heard from our colleague Senator Carney. I might say that she made a special effort to get here, because she is in very trying circumstances at the moment due to sickness in her family. I thought I would put on the record her attempt to be here to defend her bill in what must have been very trying circumstances to her.

We also heard from officials from the Department of Fisheries and Oceans and the Parks Canada agency. Then during clause-by-clause consideration of the bill, we benefited from the assistance of the Law Clerk and Parliamentary Counsel and his staff. We also benefited from Senator Comeau's research and the amendments that he put forward. I believe that these amendments have strengthened the bill.

In speaking to the report, I will explain the effect of the whole set of amendments that we have suggested to the Senate for its consideration. We proposed that the scope of the act be narrowed so that it applies only to federally-owned lighthouses. The original bill applied to all lighthouses within the legislative authority of Parliament, regardless of ownership; some may have been sold to private enterprise, et cetera, but still operated. The bill then applies only to federally-owned lighthouses.

In addition, the minister responsible for the act is specified as being the minister responsible for the Parks Canada agency. The designation of a heritage lighthouse may include any related built structure on a site that contributes to the heritage character of the lighthouse. The original bill allowed for the site on which the lighthouse was situated and any structure, work or related fixture on the site to be included in the designation.

What is more, the designation of a lighthouse as a heritage lighthouse is, under the amendments we have suggested, to be done by the minister rather than by the Governor-in-Council on the recommendation of the minister. The effect of these amendments is to put a great deal of authority in the hands of the minister. Senator Carney was not entirely happy with that, but she certainly accepts that that is the way to proceed.

The minister is to receive advice and assistance on matters related to heritage lighthouses from an advisory committee established by the minister rather than from the Historic Sites and Monuments Board of Canada. References to the board are deleted and references to the advisory committee are added.

The committee also suggested that criteria for determining whether a lighthouse should be designated as a heritage lighthouse be established by the minister, rather than being prescribed by regulations made by the Governor-in-Council. In determining whether to designate a lighthouse as a heritage lighthouse, the committee's suggested changes would require the minister to consult with the advisory committee and allow him or her to consult with other persons or bodies. Under the original bill, the minister had the discretion to seek the advice of the Historic Sites and Monuments Board before deciding whether to give a designation. If the minister sought their advice, the board was required to give interested persons a reasonable opportunity to make representations, and was authorized to sponsor public meetings before providing advice to the minister.

The original bill prohibited a person from removing, altering, destroying, selling, assigning, transferring or otherwise disposing of a heritage lighthouse or any part of it without an authorization from the minister. It provided, in some detail, for processes to deal with these matters. The amended bill would have separate and less-detailed provisions respecting alterations, sales, transfers, and the destruction of heritage lighthouses, thereby allowing some additional level of flexibility.

First, alterations would only be done in accordance with criteria and procedures established by the minister. These criteria must be in keeping with national and international standards for the conservation of heritage properties and must include requirements that all interested persons be given a reasonable opportunity to make representations concerning the proposed alteration, and that a public meeting be held.

Second, transfers to the province and sales can only be made after 90 days' public notice. Unless the sale is to a municipality, a public meeting must be held on the matter. It is Senator Carney's contention that these lighthouses are heritage lighthouses and that people are associated with them and that they engender a particular affection in the minds of the people who live near them, and have a special place in the minds of people who live on the coasts of Canada. Transfers and sales must make provision for the protection of the heritage character of the heritage lighthouse.

Finally, demolitions may only be carried out if there is no reasonable alternative and if 90 days' public notice has been given.

Senators may also be interested to know that under the original bill the owner of a heritage lighthouse had to maintain it in a reasonable state of repair and in a manner in keeping with its heritage character. Under the amended bill, the owner must maintain the heritage lighthouse in accordance with criteria established by the minister. These criteria must be in keeping with national and international standards for the conservation of heritage properties.

Finally, minor wording changes were made to the bill, such as changing "navigational aid" to "aid to navigation" in clause 2.

There was, of course, considerable discussion of the bill in committee, and clause-by-clause was a dynamic process. We feel that the changes we have proposed respect the goals and principles of the bill as agreed to by the Senate at second reading, while helping to mitigate concerns about its potential impacts.

As I mentioned at the beginning, our late colleague Senator Forrestall worked tirelessly for the bill and this is no less than the sixth occasion on which it has been before the Senate. I therefore feel that we have had adequate discussion of the item and I commend the committee's work to the Senate and ask for the adoption of the report.

Hon. Norman K. Atkins: I think we should pass this bill simply to honour the memory of Senator Michael Forrestall. He was a strong believer in the preservation of lighthouses.

When I hear Senator Rompkey's report, the one thing that occurs to me is: Are we not giving too much discretion to the minister in terms of what he or she can decide?

• (1610)

My other question is: Under whose authority would there be maintenance of these lighthouses on both coasts?

Senator Rompkey: The maintenance would be done by whomever takes over the lighthouse. The minister would have to decide, given the advice that he gets, whether someone who wanted to apply to take over a lighthouse had the wherewithal to do it, was competent to do it and able to do it. I think it is fair to say that he probably would not agree to the turnover of the lighthouse if he was not sure that those conditions applied.

With regard to the first part of the question as to whether we are putting too much authority in the hands of the minister, I alluded to that already. Senator Carney has worked on this matter for a while and has had discussions with the department. I think she is satisfied that this is a good way to proceed. There are caveats in the bill, such as public meetings. This was something Senator Carney felt strongly about, namely, that people who live near that lighthouse would have an opportunity to have their say. The bill provides for that.

I think there are checks and balances in the bill, and there is quite a bit of authority in the hands the minister. Before that, it was in the hands of the Governor-in-Council, which this bill simplifies a bit. We now know who we are dealing with: We are dealing with the minister responsible for Parks Canada. Before that, we were dealing with the cabinet. I submit that it is probably easier to deal with the minister than it is to deal with the whole cabinet. I hope that answers the question.

Hon. David Tkachuk: Honourable senators, my honourable friend mentioned that the minister was able to impose certain guidelines as to the upkeep of the lighthouses. Are there lighthouses that would be owned not by DFO but by private individuals?

Senator Rompkey: There are lighthouses now owned by private individuals, but I do not know that there are any provisions that they must keep up the heritage features of the lighthouse. I know of one lighthouse, for example, that is on an island near Quirpon on the Northern Peninsula of Newfoundland. It is owned by a couple from Corner Brook and they operate it as a bed and breakfast. They operate it very well and are doing very well. They take people over in a boat — would do it for you, if you paid them — and you would have quite a nice time there. There are lighthouses owned by municipalities and owned by private individuals, but this bill would provide for them to keep up the heritage character of the lighthouse once it was turned over to them.

Senator Tkachuk: "Turned over." Just so that I am clear, a lighthouse must be designated as a heritage site. Not all lighthouses are heritage sites?

Senator Rompkey: Right.

Senator Tkachuk: We do not have property rights in our Constitution. If a lighthouse is designated as a heritage site — for example a private one that has a bed and breakfast because some deputy minister thought that it looked nice — and then the government starts imposing things on them as to how they have to maintain it, what protection is there for the owner to say, "Take off, this is mine"?

Senator Rompkey: I tried to allude to that when I spoke earlier. First, the minister must designate the lighthouse. As the honourable senator says, not all lighthouses will be designated as heritage, but some of them will be. The minister will have to take that decision, after receiving advice. Once he takes that decision, he will have to assess whether the people who are taking over the lighthouse have the wherewithal to do it. He will have to say to them, "If you take this over, you will have to maintain international and national standards for heritage buildings. There are Canadian standards for heritage buildings; there are guidelines for heritage properties. If you take this lighthouse over, you will have to follow those national guidelines, the guidelines of Canada." The minister will have to determine whether they are able to do that. If they cannot, I would think he would not turn it over because he is committed to maintain certain standards. People may come forward and say, "We have the wherewithal; we can show that to you. We have a plan; we can show that to you." This could be a province or a municipality. In this country, the pecking order for disposal of federal properties is the province first, the municipalities second and then everyone else third.

There is a process to follow regarding the disposal of Crown assets. Once you get through the pecking order, you get down to people who want to take it over. They must show the minister that they can and he must be satisfied that they can.

Hon. Willie Adams: Honourable senators, I was on the committee during clause-by-clause consideration of the bill last week. I have been in support of this bill from the beginning. Senator Carney has worked on it for over 10 years. We found out that some of the witnesses in the department had changed their minds between DFO and Parks Canada — that is, once they found out how much it costs to operate lighthouses.

In last four or five years, some of the research funding from DFO for fishing in Nunavut has come from the Department of Fisheries and Oceans. Every year, it was about $200 million to study the fishery in Nunavut. However, we found out that Heritage Canada has no funds to look after the upgrades for heritage buildings. Even after maintenance is done after many years, the lighthouse still belongs to the Department of Fisheries and Oceans. They must come up with the money for anything that needs to be repaired from a fund set up for that purpose.

I have heard from the Department of Fisheries and Oceans that you cannot add money to the funds for some of the research on the future of fishing in Canada. The department contracts out some of that research. We do not know how much it will cost to move it or to turn it over to the municipality, but the municipality has no control over it now and therefore cannot maintain it. We do not know how much it will cost. For example, will it cost another $10 million? If I need $10 million for someone to do research on the fishery in Nunavut, that money cannot come to our area.

That is why I ask this question to our chairman, Senator Rompkey, who comes from down East: If a municipality takes over everything, such as tourism so that more people are coming into an area, I accept that. However, heritage belongs to DFO. If anything needs to be done, they have to do it. That is what we heard from the witnesses.

The Hon. the Speaker: Honourable senators, as we are on Senator Adams' time, does Senator Rompkey wish to ask a question of Senator Adams?

Senator Comeau: No; that was a question.

The Hon. the Speaker: We are on Senator Adams' time.

Senator Rompkey: I think His Honour is signalling that my time is up.

The Hon. the Speaker: We are on Senator Adams' time. I am sure that Senator Rompkey wants to ask Senator Adams a question.

• (1620)

Senator Rompkey: I wish to make a comment on Senator Adams' intervention.

If DFO continues to own the lighthouse, then DFO is responsible for the upkeep of the lighthouse. The cost of the upkeep would come out of its budget. If the minister decides to turn over that lighthouse to an individual, then obviously the upkeep would be his or her responsibility. However, DFO would make the determination before turning over the lighthouse that the new owner had the wherewithal to operate it. It has to be one or the other; either DFO keeps it and operates it out of its budget, or turns it over to someone who demonstrates the wherewithal and competence to operate it.

Hon. Gerald J. Comeau (Deputy Leader of the Government): I know the pressure is on to deal with this bill. Believe me, I know. However, I wanted to hear Senator Rompkey's comments before I offered mine, which I undertake to make tomorrow. Again, I know the pressure is on. There are a number of issues which I wish to deal with tomorrow. I am not in any way trying to delay this matter. I do wish to gather my thoughts and make my comments tomorrow. On that premise, I move the adjournment of the debate.

On motion of Senator Comeau, debate adjourned.

AGREEMENTS BETWEEN FEDERAL GOVERNMENT AND PROVINCES AND TERRITORIES ON CHILD CARE

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Trenholme Counsell calling the attention of the Senate to concerns regarding the Agreements in Principle signed by the Government of Canada and the Provincial governments between April 29, 2005 and November 25, 2005 entitled "*Moving Forward on Early Learning and Child Care*", as well as the funding agreements with Ontario, Manitoba and Québec, and the Agreements in Principle prepared for the Yukon, the North West Territories and Nunavut. —(*Honourable Senator Munson*)

Hon. Jim Munson: Honourable senators, I am pleased to rise on this inquiry by Senator Trenholme Counsell dealing with the Agreements in Principle signed by the Government of Canada and provincial governments between April 29, 2005 and November 25, 2005, entitled, *Moving Forward on Early Learning and Child Care*, as well as the funding agreements with Ontario, Manitoba, Quebec and the agreements in principle prepared for the Yukon, the Northwest Territories and Nunavut.

Honourable senators, some time has passed since the Conservative government put in place their so-called child care program. I am sure that families across the country are happy to have an additional $100 in their monthly budget. Raising children is expensive and, if you need to pay for child care, you can spend anywhere from $25 to $60 a day. That means the government's so-called child care program pays a fraction of the real cost — between four days to two days worth of child care a month, or $5 a day. Is it better than nothing? Of course. Is it good enough? Not even close.

I want to back up a little. I do not want honourable senators to think that by mentioning the cost of child care, I think that cost is the most important factor when it comes to early childhood development and the well-being of families in this country.

The Conservative government said that its child care policy was about providing direct support to families so that parents would choose the care they most wanted.

Well, honourable senators, my guess is that most parents want top quality care, and top quality care costs more than $5 a day. Without the support they need, families are making child care choices based on what they can afford, not what is best for their kids.

Also, almost all of Canada's children are looked after in unregulated settings by people who may or may not have the necessary training to provide enriching care for babies and preschool children. The national child care agreements between the provinces and the former Liberal government would have allowed parents both choice and access to care that is top quality.

The *2006 Report Card on Child and Family Poverty in Canada, Campaign 2000*, reported that child poverty in this country is worse now than it was in 1989. One in six children lives in poverty, and one in four First Nations children lives in poverty.

What do child poverty and child care services have in common? They have many things in common. How interesting to note that Quebec is the only province where child poverty rates have been dropping since 1997. This is likely due, at least in part, to family support benefits and a rapid expansion of affordable early learning and child care services.

Let us compare this to Alberta, where the economy is booming and the child poverty rate is in double digits, somewhere between 14 per cent and 15 per cent since 1999. Meanwhile, we have a projected federal surplus in the double digits for 2006-07. What are we doing with a double digit surplus when we have child poverty statistics in the double digits? This is not right.

With national child care programs, parents can work or receive training, thereby breaking through the trap of poverty while knowing that their children are in good hands and cared for by people who are trained in early childhood education.

Why are we not doing more, senators?

It has become clear that this Conservative government is more interested in tax cuts and providing Canadians with small monetary breaks while abandoning the business of nation building and making Canada better for greater numbers of people, especially those most in need.

We lag far behind many of our counterparts in the Organization for Economic Co-operation and Development by devoting much less of our GDP to early childhood development programs.

Canada has what it takes to help families access quality child care and to help alleviate child poverty. As Senator Trenholme Counsell has pointed out, the need is there: 84 per cent of parents work either in or outside of their home to provide families with needed income.

The traditional "mom at home" model that many Conservatives are nostalgic for just does not wash. Almost three quarters, 70 per cent, of women with pre-school aged children are in the paid workforce. This is our world today. Let us make it child friendly.

There is a need. Let us fix it. We cannot say that we cannot afford it. The money is there. We have a federal surplus projected at $13 billion for 2006-07. I shudder to think what would have happened if we left the new government with a deficit.

The need is there, and the money is there. Clearly the only thing lacking is political will. I am pleased to speak to this issue and work toward bringing it to the attention of Canadians.

I would like to thank our honourable colleague Senator Trenholme Counsell, who has been home in New Brunswick recuperating from major surgery. On her behalf, I would like to ensure that we keep this issue front and centre.

Hon. Roméo Antonius Dallaire: Honourable senators, if I am correct, I heard Senator Munson say that one in six children in this country suffers in a poverty status, and one in four children in our First Nations is in a poverty status.

We have projects internationally through CIDA. In places such as Brazil, which is competing with us in the aircraft industry, we have development projects, including those to assist families and children in difficult circumstances.

• (1630)

In the documentation that honourable senators have looked at, has a perverse sense of colonialism on the part of the government created a scenario in which First Nations are in a worse state of child poverty than are other Canadian children who are in a scandalous state?

Senator Munson: I thank Senator Dallaire for the question. Yes, First Nations children are in a worse state. When I was a reporter and working in China and throughout the Far East for five years, I covered many stories dealing with poverty, including Gangzhu province in China, where CIDA projects were at work. A water project brought joy to the faces of hundreds and hundreds of villagers as they received a basic need called "water." I covered a war or two in Cambodia and saw the orphanages and watched Canadian men and women deal with people in poverty.

When I returned to Canada after ten years, I was startled. One of the first stories that I covered was in Davis Inlet. I was one of the first reporters to go to Davis Inlet, where I saw the poverty, the gas sniffing and all that was going on at that time. I could not believe what my eyes were seeing — I thought that I was back in a third world country.

Rather than play a partisan game of politics on a late Wednesday afternoon, there has to be a collective will to deem this poverty scandalous. Canada has so much money, so much to offer and so much to give. Perhaps when we step out of this chamber and travel across this country we can take some of the examples used by Canada to help people in other parts of the world in order to alleviate what is in our own backyard. It is not about politics; it is about people.

Senator Dallaire: The honourable senator is quite correct in not making this a political football. The state of poverty of our children is an ongoing exercise. Honourable senators know that there are non-government organizations in various Canadian provinces and cities that collect money so that they are able to provide breakfasts for children who go to school hungry.

Could something be considered, at least at the provincial level if not the federal level, that would guarantee food for children who come to school hungry so that they do not have to depend on the generosity of NGOs and other campaigns to be nourished before they begin their lessons each day?

Senator Munson: I agree with Senator Dallaire. Another story that I covered when I returned was in Atlantic Canada — Whitney Pier, Nova Scotia, which is a pretty wonderful place with great people. However, the children had no breakfast to eat in the morning and had nowhere to go — there was no social centre or any other place for them to gather.

Senator Stratton: What year was that?

Senator Munson: It was in 1995.

Senator Stratton: Who was in Parliament?

Senator Munson: Senator Stratton is always saying these things and I am getting used to it. I am not Senator Mercer, I am Senator Munson. What year was that? It was 1995. I was a reporter then; I was not even a Liberal senator.

Senator LeBreton: But you were a Liberal.

Senator Munson: Of course, I am a Liberal through and through because Liberals have social values, and believe in the intervention of the state to help those who cannot help themselves. Is there something wrong with that or is it every man and woman for himself as you find in the republic of the United States of America? Is that what you are saying?

Senator Stratton: A little thicker skin, sir.

Senator Munson: As a reporter I am supposed to be objective, and I am objective about all of these issues. I am also a person who grew up in a United Church manse and my father was a minister. One of the most wonderful things in my life growing up in Northern New Brunswick was that those who enjoyed comforts at home stepped outside their homes, whether at Thanksgiving or Christmas or at any other time, to help those who did not have such comforts. I believe that governments have a major role to play in this scenario.

The Conservative government was the recipient of a $13-billion surplus left by the Liberal government and should be able to find at least a few hundred million dollars to help alleviate child poverty.

Hon. Joan Fraser (Deputy Leader of the Opposition): Honourable senators, I had not planned to participate in this debate today but two elements of what has just occurred have prompted me to rise.

The first element is the always entertaining discussion about journalists and reporters. I did not know Senator Munson when we were both journalists, but I would be willing to bet that he, like me, came to the Liberal Party because it was the party that had historically most often represented the values in which he had believed and on which his career had reinforced his belief.

When you travel and meet the disadvantaged of this world, it affects your values. Those values are not held exclusively by Liberals of course, they are not. I can remember once endorsing and voting for former Prime Minister Mulroney because there was a time when he represented those values. However, most often, in my view, those values in Canada have been represented by the Liberal Party, not by the NDP; not by the folks further left on the spectrum.

The second element was also prompted by Senator Munson's words and reminded me of an experience that has stayed with me in many ways. It had to do with what he had seen when he was abroad. I grew up, as I have said in this chamber before, in a third world country, but that is not the experience I want to talk about. A few years ago, when on a parliamentary delegation, I found myself in Cuba. I believe that Senator Prud'homme might have been part of the same delegation.

Senator Prud'homme: Yes, I was; and it is a good country.

Senator Fraser: Cuba is a police state and a dictatorship.

Senator Prud'homme: It has great education and health care systems.

Senator Fraser: I am getting there, Senator Prud'homme. It is a poor country that has mismanaged its economy so dramatically that in this large, agricultural territory, surrounded by rich oceans, the inhabitants have to import food. It is staggering how badly they have managed many elements of their society, but they have done some things in the right way

Senator Prud'homme: Of course.

Senator Fraser: No matter how much poverty there is, every child in Cuba gets an education from preschool to as far as they can go. If they can handle post-doctoral work, they get it for free.

Senator Prud'homme: Yes. As well, there is the health system.

• (1640)

Senator Fraser: Oh, yes, health care, of course. We also have a system of public health care.

We were told of a billboard that had been placed in Havana a few years before we were there, which I found very touching in that poor country. The billboard said that around the world, X hundreds of millions of children sleep every night in the streets, and not one of them is Cuban.

That brings me to the third priority that the Cuban government set for itself that struck me. Every Cuban has a roof over their heads. It may be the most miserably modest housing imaginable by Canadian standards, but every single one of them is housed.

If this poor and otherwise dramatically mismanaged country, this authoritarian, corrupt police state, can set those priorities and stick to them, I wonder why we, in a rich, free, caring democracy, cannot do the same.

Senator Munson: Honourable senators, I have just a very brief aside.

The Hon. the Speaker: Senator Munson, if you wish to ask Senator Fraser a question or make a comment, that is where we are at the moment.

Senator Munson: I am sorry about that. I am still getting used to this place. I just celebrated my third year on December 10. I am now into my fourth year. Time keeps marching on, as some of the Conservative senators can see.

At the end of the day, Conservative senators can surely do better than provide $100 a month.

[*Translation*]

Hon. Aurélien Gill: Honourable senators, I was not going to participate in this debate, but the subject is so sad that I feel I should. Senator Fraser mentioned that meeting disadvantaged people changes a person.

I suggest that you go to the La Vérendrye wildlife reserve, not far from Montreal. You will see a group of 10 or 15 people living there without electricity, without running water, in tarpaper shacks. If you want to see something sad, go there. They are a group of Algonquins.

On motion of Senator Corby, debate adjourned.

The Senate adjourned until Thursday, December 14, 2006, at 1:30 p.m.

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