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

## Thursday, October 26, 2006

**THE HONOURABLE NOËL A. KINSELLA**
**SPEAKER**

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# THE SENATE

**Thursday, October 26, 2006**

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

Prayers.

## SENATORS' STATEMENTS

### THE CHARTER OF RIGHTS AND FREEDOMS

**Hon. Serge Joyal:** Honourable senators, last week, I drew your attention to a recent decision of the Superior Court of Ontario that declared null and void two sections of the Canada Elections Act, namely, those dealing with the financing limitations imposed on small parties, as being contrary to sections 3 and 15 of the Charter of Rights and Freedoms. I underlined that the bill that introduced those limitations, Bill C-24, had been certified by the Department of Justice and that, in the past, two similar bills dealing with the Elections Act had been declared contrary to the Charter.

Last Thursday, October 19, section 4 of the Security of Information Act included in the anti-terrorism bill, Bill C-36, was declared by Justice L.D. Ratushny of the Ontario Superior Court to be contrary to section 7 and section 2(*b*) of the Charter of Rights and Freedoms. Section 4 of the Security of Information Act was found "to be so vague and broadly worded that in fact the government could use it to arbitrarily protect whatever information it chooses." Honourable senators will remember that this case dealt with the search and seizure that the RCMP conducted at the home of Juliet O'Neill, an *Ottawa Citizen* reporter.

When the Senate was asked to consider the draft of the Anti-Terrorism Act in the fall of 2001, some senators on both sides of the chamber expressed concern over the implications of the bill on human rights and freedom. Senator Kinsella introduced an amendment to ask the special committee "in its examination to explore the protection of human rights and civil liberties on the application of the act."

• (1335)

In speaking on that motion, I personally stated that, with this bill, we were close to crossing, as the French expression states, "le Rubicon des droits et libertés," the Rubicon of rights and freedoms, and that we need a monitoring capacity over the police who were given such broad powers. We know now, through Justice Rutherford, that in fact we have already crossed the Rubicon of rights and freedoms with the anti-terrorism bill. In fact, we have crossed it at least twice.

This week, on Tuesday, October 24, another decision, this time by Justice Ratushny of the Ontario Superior Court, declared null and void and contrary to section 2(*b*) of the Charter the very definition of "terrorism" that linked it to political, religious and ideological beliefs. The court stated that allowing it to stand would "promote fear and suspicion of targeted political and religious groups, and would result in racial and ethnic profiling by government authorities at many levels."

Again, some senators on both sides of the chamber expressed a similar concern: Senator Jaffer, Senator Andreychuk and I, among others.

The court even referred specifically to the debate of the Special Committee at paragraphs 10, 13, 65, 76 and 86, on this very issue, and concluded that the element of the definition that refers to motives was contrary to the criminal law traditions of Canada.

Let us remember that the Department of Justice had certified the anti-terrorism bill as complying with the Charter.

Honourable senators, we have a duty to review the legislation and to seriously study its impact on the rights and freedoms of Canadians. Senate debates are useful to the courts when they need to address these serious issues. We should remain vigilant, honourable senators, and continue to do a sharp and vigorous study of the Charter's implications on bills that are submitted to us in haste and through pressure from public opinion. These three court decisions in less than 10 days that have found bills to fall short of Charter protection speak to that duty.

### SPECIAL COMMITTEE ON SENATE REFORM

REPORT—CLARIFICATION

**Hon. David Tkachuk:** Honourable senators, I want to discuss with you what went on during my speech yesterday on Bill S-4. I want to make clear that until this morning I had not seen a copy of the report of the special committee that was studying the subject-matter of Bill S-4.

I participated in the meeting of that special committee last Thursday, but I left the meeting while it was still going on and had another senator take my place. The steering committee of that special committee was actually given the right to clear the report when we left last Thursday. However, the steering committee did not reveal the contents of the report to me, and certainly the deputy chair of that special committee, Senator Angus, did not.

While I can understand that Senator Carstairs, probably due to visions of previous Question Periods, might have been a little impulsive at calling a point of order, what I did not understand was why the chairman of that special committee, Senator Hays, supported her point of order, considering he knew full well that that was the way that the committee was left last Thursday. Unless the report was distributed earlier, I had not seen a copy.

I want to impress this message upon honourable senators, because senators on both sides know how much I have objected in the past to such leaks. I want honourable senators to read the report today so that they will understand what I am talking about.

I also know that, in the past, I have opposed and been extremely upset in this place whenever a report is leaked to the news media, or whenever a report has been presented to those

outside this place before we have seen it here. Something I have always been extremely proud of is that I have never leaked a report, nor talked to a media person about a report, before it was tabled in this chamber.

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

• (1340)

**Senator Tkachuk:** Senators who have been here during my tenure know that that is so. Therefore, I just wanted to clarify what happened.

Honourable senators know me: I am like a dog with a bone on these things. However, I do not want the majority opposite to abuse us poor senators on this side of the house any further by calling points of order while we are trying to make a speech on a political point.

## STATE OF LITERACY

**Hon. Joyce Fairbairn:** Honourable senators, it has been about five weeks since we learned about the cuts for literacy, and I wanted to update you on a few things that are happening across the country, starting with the Yukon Literacy Coalition. That group will see a third of its budget cut and will most likely close the coalition down in three or four months.

The Northwest Territories has seen a third of its budget cut, and it is unable to conduct its outreach programs in that vast territory.

British Columbia will also lose a number of specific activities, particularly in shared learning for community literacy groups across the province.

Alberta has lost half of its funding. It, too, will be closing down the delivery of some of its programs that support practitioners, tutors and learners.

Saskatchewan is in immediate jeopardy of closing its doors. That means it will take down the system in Saskatchewan, which includes practitioner training, conferences and a toll-free number for people who want to learn.

Manitoba will lose about 80 per cent of its funding, and the closure of the coalition is destined for the spring of next year.

Ontario will be severely reducing the availability of its Aboriginal, francophone, deaf and anglophone adult literacy programs. Family support programs will be almost non-existent.

The English Literacy Alliance in Quebec faces closure, and the operating budget for the French part of its program will effectively be cut in half.

Nova Scotia funding for seven projects has ended, which will affect 6,000 Nova Scotians currently participating in literacy programs.

The Prince Edward Island Literacy Alliance, as we know from Senator Callbeck, is likely to close. That could happen also with the successful summer tutoring program for kids.

In Newfoundland and Labrador, the provincial body will only be able to survive on surpluses for five months. With it will go numerous programs, including the literacy hotline, the promotion of family literacy and its work and initiatives pertaining to workplace literacy.

In Nunavut, all of the training programs for adult educators and literacy practitioners are gone. Most of the training and support for community-based groups and organizations are on their way out. Finally, it appears that the resources to support the delivery of literacy programs to learners are gone, and the programming in Nunavut Arctic College is at risk.

## THE LATE HONOURABLE HOWARD CHARLES GREEN

**Hon. Hugh Segal:** Honourable senators, I rise in my place today to pay tribute to the Honourable Howard Green, a distinguished servant of Canada in war and peace and an able, plain-spoken and loyal son of British Columbia. His name was mentioned in a question to the Minister of Public Works in the chamber yesterday.

Howard Green served with the 54th Kootenay Battalion in France in the First World War. Having seen the horror of war first-hand, he was a determined activist for disarmament as an MP for Vancouver Quadra for 24 years, and as the Rt. Hon. John Diefenbaker's Minister of Defence Production and External Affairs.

• (1345)

At a Geneva disarmament conference in July 1962, Mr. Green, speaking on behalf of all Canadians, said:

> Mr. Chairman, all this testing is sheer madness — polluting the air that humans must breathe, endangering the lives of generations yet unborn, and possibly leading to the destruction of civilization.

His work, and that of Canada's Gen. E.L.M. Tommy Burns, whom Green brought back from the Middle East to work with UN colleagues on disarmament in Geneva, had a significant impact on the positive outcome that followed. Within the Diefenbaker cabinet he opposed the imposition of American nuclear tips on our Beaumark missiles in North Bay and La Macaza.

This is the loyal minister, soldier and public servant whom a federal building should be named after in Vancouver, British Columbia.

The reprehensible and unforgivable treatment of Japanese-Canadians during World War II is a blot on the conscience of all who lived in that era and supported those excesses. To focus the blot on one person decades after statements were made, which will be seen today as inappropriate, is both childish, contextually ahistorical and unfair. Are we to take the name of Mackenzie King off bridges and buildings across Canada? It was Mackenzie King who rounded up the Japanese-Canadians, not Howard Green.

On September 22, 1988, the Rt. Hon. Brian Mulroney, Prime Minister of Canada, extended in the Parliament of Canada an elaborate, well-deserved, deeply articulated, heartfelt and sincere apology to all Japanese-Canadians and their descendants. It was an historic day, as was the foundation established to make that apology a living reality in perpetuity.

The Government of Canada should be courteous and sensitive, as Senator Hays would want, to those of our fellow Canadians who are concerned about what was said in 1938, 68 years ago, but that is no reason to fail to name a federal building after the Honourable Howard Green, a Canadian, a soldier and a servant for all time.

## GLOBAL CENTRE FOR PLURALISM

**Hon. A. Raynell Andreychuk:** Honourable senators, I rise to draw attention to, and commend Prime Minister Stephen Harper and his government for entering into a partnership with His Highness the Aga Khan to establish the new global centre for pluralism in Ottawa. With the official signing yesterday, this initiative has turned into a reality. The Sussex Drive landmark that was the former home of the Canadian War Museum will now become the new global centre for pluralism. As was noted by His Highness the Aga Khan, this symbolism should not go unnoticed.

The centre will promote pluralism internationally as a means to advance good governance, peace and human development. It will also support academic and professional development, provide advisory services and support research and learning in developed and developing countries.

The moving and eloquent addresses of Prime Minister Harper and His Highness the Aga Khan paid tribute to Canada's diversity and the strength of pluralism as a force for peace and tolerance. The Aga Khan very wisely said that the clash of civilizations is not inevitable despite an array of symptoms that might appear to suggest otherwise. He spoke of systems being rooted in human ignorance rather than in human character, and put forward the solution of the centre as one way of addressing this problem of ignorance.

The Shia Imami Ismaili Muslims, many of whom came to Canada in 1972, were present in the audience to hear their leader express admiration for Canada's multicultural policies and, in particular, pay tribute to their efforts and contributions to Canada and its pluralistic model. Two parliamentarians in particular who represented this community were Mr. Rahim Jaffer, who served as the master of ceremonies of the program yesterday, and Senator Mobina Jaffer.

The Prime Minister stated:

> Pluralism is the principle that binds our diverse people together. It is elemental to our civil society and economic strength.

As parliamentarians, the new centre and its work should serve as a reminder to all parliamentarians to continue to support the cause of pluralism and to exercise Canada's global leadership in the same way by promoting peace and tolerance.

I hope that all Canadians, in particular all honourable senators, will take the opportunity to read the full text of the comments of His Highness the Aga Khan and of the Prime Minister. They serve as templates on how to use diversity and pluralism to prosper as peaceful and tolerant societies.

• (1350)

[*Translation*]

## NATIONAL HEALTH STRATEGY FOR MOTHERS AND INFANTS

**Hon. Lucie Pépin:** Honourable senators, the Society of Obstetricians and Gynaecologists of Canada, the SOGC, recently reviewed the health of Canadian mothers and children.

Many of us believe we have achieved full control over maternal and newborn care. That is not the case according to the SOGC. On the contrary, the organization says, "Canada is facing a crisis in obstetrical care."

[*English*]

The crisis that the SOGC is talking about can be seen in the OECD statistics for this year. In 1990, Canada's maternal mortality rate was the second lowest. In 2006, we dropped to eleventh place. Over the same period, we dropped from sixth place for infant mortality to twenty-first place. These figures show not only that our maternity care is declining in quality, but also that there are more women and babies who are not surviving pregnancy and delivery.

There are many reasons for this, but one of the main causes is a shortage of human resources. The dwindling number of obstetricians and gynecologists in practice and of general practitioners willing to deliver babies is currently posing a serious problem. The future is no more reassuring. Over the next five years, almost 30 per cent of our obstetricians and gynecologists will be retiring from full-time practice.

[*Translation*]

There is also a serious lack of services for mothers and babies in rural and remote communities. Women giving birth in those areas are increasingly at risk. Community hospitals in some remote communities have been closed, and there are no other options available. Pregnant women are often removed from their communities so they can have access to appropriate care while giving birth. Yet every Canadian woman, regardless of where she lives, should be able to give birth safely close to home.

The SOGC believes that major changes are needed to reset the bar. It recommends adopting a birthing strategy for Canada, a multi-faceted way to address obstetrical care shortages. This strategy would implement collaborative care models for prenatal and postnatal care and look at ways of providing optimal care in urban, remote, rural and aboriginal communities.

The national strategy proposed by the SOGC would give the provinces and territories a way to maximize their resources and develop solutions to meet their immediate needs.

The federal government must quickly take the initiative in developing a plan that supports pregnant women in Canada. We must not forget that there is no waiting list in obstetrics. Every pregnancy is urgent.

Honourable senators, I invite you to join the stakeholders in maternity and newborn care in urging our government to take the lead in improving the availability and quality of maternity care for Canadian women.

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[*English*]

# ROUTINE PROCEEDINGS

## CONSTITUTION ACT, 1867

BILL TO AMEND—REPORT OF COMMITTEE ON SUBJECT MATTER TABLED

**Hon. Daniel Hays (Leader of the Opposition):** Honourable senators, I have the honour to table the first report of the Special Senate Committee on Senate Reform, which deals with the subject matter of Bill S-4, to amend the Constitution Act, 1867 (Senate tenure).

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Hays, report placed on the Orders of the Day for consideration two days hence.

BILL TO AMEND—REPORT OF COMMITTEE ON MOTION TO AMEND PRESENTED

**Hon. Daniel Hays (Leader of the Opposition),** Chair of the Special Senate Committee on Senate Reform, presented the following report:

Thursday, October 26, 2006

The Special Senate Committee on Senate Reform has the honour to present its

SECOND REPORT

Your Committee, which was referred the motion to amend the Constitution of Canada (western regional representation in the Senate), has in obedience to the Order of Reference of Wednesday, June 28, 2006, examined the said motion and now reports the same without amendment.

Attached as an appendix to this report are the observations of your Committee on the motion to amend the Constitution of Canada.

Respectfully submitted,

DANIEL HAYS
*Chair*

(*For text of observations, see today's* Journals of the Senate, *p. 565*.)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Hays, report placed on the Orders of the Day for consideration two days hence.

• (1355)

[*Translation*]

## STUDY ON TELECOMMUNICATIONS AND RADIO APPARATUS FEE PROPOSAL

REPORT OF TRANSPORT AND COMMUNICATIONS COMMITTEE PRESENTED

**Hon. Lise Bacon**, Chair of the Standing Senate Committee on Transport and Communications, presented the following report:

Wednesday, October 25, 2006

The Standing Senate Committee on Transport and Communications has the honour to present its

FIFTH REPORT

Your Committee, to which was referred the document entitled "New Fees for Services Provided by Industry Canada Relating to Telecommunications and Radio Apparatus," has, in obedience to the Order of Reference of Tuesday, September 26, 2006, examined the proposed changes to existing user fees and, in accordance with section 5 of the *User Fees Act*, recommends that they be approved.

Your Committee notes that this is the first time that this process has been used since the adoption of the *User Fees Act*, and recognizes that it provides important improvements in transparency.

Your Committee further notes that these proposals were reductions to existing user fees, resulting from improved efficiencies. It is hoped that future proposals will be in the same vein.

Respectfully submitted,

LISE BACON
*Chair*

**The Hon. the Speaker:** When shall this report be taken into consideration?

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

[*English*]

## SCRUTINY OF REGULATIONS

THIRD REPORT OF JOINT COMMITTEE TABLED

**Hon. J. Trevor Eyton:** Honourable senators, I have the honour to table the third report of the Standing Joint Committee of the Senate and the House of Commons for the Scrutiny of Regulations, which deals with tabling of statutory instruments.

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

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

## CANADA-UNITED STATES INTER-PARLIAMENTARY GROUP

### SOUTHERN GOVERNORS' ASSOCIATION ANNUAL MEETING, JULY 15-17, 2006—REPORT TABLED

**Hon. Jerahmiel S. Grafstein:** Honourable senators, pursuant to rule 23(6), I have the honour to table in the Senate in both official languages the report of the Canadian delegation to the Canada-United States Inter-Parliamentary Group respecting its participation at the Southern Governors' Association 2006 annual meeting held in New Orleans, Louisiana, from July 15 to 17, 2006.

### WESTERN GOVERNORS' ASSOCIATION 2006 ANNUAL MEETING, JUNE 11-13, 2006—REPORT TABLED

**Hon. Jerahmiel S. Grafstein:** With your indulgence, honourable senators, pursuant to rule 23(6), I have the honour to table in the Senate in both official languages the report of the Canadian delegation to the Canada-United States Inter-Parliamentary Group respecting its participation at the 2006 annual meeting of the Western Governors' Association, held in Sedona, Arizona, from June 11 to 13, 2006.

• (1400)

## INAPPROPRIATE USE OF OBSERVATIONS ACCOMPANYING COMMITTEE REPORTS

### NOTICE OF INQUIRY

**Hon. A. Raynell Andreychuk:** Honourable senators, I give notice that two days hence, I will call the attention of the Senate to the inappropriate use of observations accompanying committee reports.

## HERITAGE

### PRAIRIE GIANT: THE TOMMY DOUGLAS STORY—PRESENTATION OF PETITION

**Hon. Robert W. Peterson:** Honourable senators, I have the honour to present a petition from residents of Saskatchewan concerning the inaccurate portrayal of the Rt. Hon. Jimmy Gardiner in the CBC film *Prairie Giant: The Tommy Douglas Story*.

# QUESTION PERIOD

## TREASURY BOARD

### PROPOSED FEDERAL ACCOUNTABILITY ACT—GOVERNMENT POSITION ON AMENDMENTS

**Hon. Daniel Hays (Leader of the Opposition):** Honourable senators, my question is to the Leader of the Government in the Senate, who serves this chamber and works very hard not only as the government's representative, but also as the Senate's representative at the cabinet table. It is in that capacity that I direct these comments and questions to her today.

The work on Bill C-2 has been finished by the Standing Senate Committee on Legal and Constitutional Affairs. The house awaits the tabling of the committee's report later this day. The government has responded harshly to amendments that the public has been made aware of. For example, there is an amendment in respect of the application of the Access to Information Act to the Canadian Wheat Board, something for which the government claims credit, but it was in fact the New Democratic Party in the other place that moved to include the Canadian Wheat Board as being subject to the Access to Information Act. Witnesses from the CWB appeared before the Legal Committee and testified that if the CWB were subject to the Access to Information Act, it could not compete effectively in international markets with grain companies that do not have to disclose pricing and other information. That is why the amendment was made.

In respect of clauses in Bill C-2 on political contributions, Mr. Jean-Pierre Kingsley, the Chief Electoral Officer, stated before the Legal Committee with virtual certainty that convention fees can be receipted and, accordingly, are to be made public. The Legal Committee clarified that matter, in part, by increasing the amount of contributions allowed so as to remedy that problem.

My point to the minister is that the house must engage on these issues. This side would like to hear answers from the government to the questions on the policy matter that motivated the changes made by the Standing Senate Committee on Legal and Constitutional Affairs to the bill, keeping in mind that a response is not requested only because we are senators.

Could the Leader of the Government help this side by encouraging and causing the government to join the issue on a policy basis in respect of these two matters, rather than help simply because we are senators?

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, on the matter of the Canadian Wheat Board being subject to the Access to Information Act, my honourable friend is correct. When the federal accountability bill was before the House of Commons, an amendment was moved by the NDP in this regard. However, the relevant issue of Bill C-2 was this was part of the package sent to the Senate from the House of Commons without a single voice in opposition. All parties voted for the bill.

• (1405)

That is what the public, the Prime Minister and the government were responding to. The deliberations of the committee are public. As such, we, the government, are interested in what happens to our first real piece of proposed legislation — proposed legislation that is so important, not only to the government, but also to the Canadian public.

We all know what spawned the need for the federal accountability bill. I can only say that, when the bill is before the Senate, we will obviously be debating it here, and we will send it back to the House of Commons — soon, I would hope.

The question of political donations did take up some time in the committee. There is a difference of view, a philosophical difference, regarding the use of tax receipts for political conventions.

However, one of the interesting things that did come out of the testimony at the committee was that, according to one of the senators from the other side, tax receipts are issued for monies that are paid into the caucus fund. That, of course, is something that is quite improper. It is no wonder there was some concern that one would not be able to attend the convention, if one was, in fact, running receipts for buying coffee, doughnuts and lunches through the Liberal Party's fundraising arm and having the taxpayers subsidize personal expenses within a caucus.

**Senator Hays:** I thank the minister for her extended comment, but the point still rests. We should be engaging on the merits of this matter.

In the case of the Canadian Wheat Board, I did not hear a proper or a satisfactory response to the problem the wheat board has in the international competitive market it operates in. I think we must engage on that.

In terms of political contributions, the same comment applies. My example was not caucus funds; I am not sure how caucus funds are treated. I suppose that goes into the detail of the proposed act.

However, I am sure that the Chief Electoral Officer said that fees to attend political conventions can be receipted. I think that is for the very good reason that otherwise there would be a loophole. If receipts cannot be issued for fees, they are not made public — and they involve large amounts of money. The Senate committee remedied that problem.

Again, I think we need to engage at that level on these issues. The Prime Minister said earlier today that this is simply an anti-democratic decision; it is not.

Perhaps the minister can explain what is anti-democratic about the Senate? It is an appointed body, but it is totally within the context of the Canadian Constitution. It has amended bills before.

We need to engage on the issues that are before us, not on whether we are senators or whether we are Liberals or Conservatives. Can the minister help us with the government on that count?

**Senator LeBreton:** With regard to the Canadian Wheat Board, we have some philosophical differences. As the honourable senator knows, we campaigned on marketing choice.

I do not believe any agency that uses public funds should be beyond the ability of the taxpayers — who, after all, pay for these agencies — to know what is happening with their money.

With regard to the political donations and the funding of conventions, we have a serious philosophical difference. We do not believe that the taxpayer should be subsidizing political functions. A tax receipt is fine if it turns into a fundraising event, but we do not believe that the taxpayer should be subsidizing party meetings and functions.

## FUNDING FOR LITERACY PROGRAMS

**Hon. Marilyn Trenholme Counsell:** Honourable senators, I rise to continue the dialogue, if you will, and the questioning regarding literacy.

Last week, while I was at home in New Brunswick, "literacy" made the front page of our little local newspaper. In the *Sackville Tribune-Post* of September 18, a front-page headline read as follows: "Literacy initiatives being cut in Tantramar region." This is a story, as we know, right across Canada.

• (1410)

On Monday, I went to the annual meeting of the Literacy Coalition of New Brunswick, and they are devastated. I have also had several conversations with the Fédération de l'alphabétisation, our French counterparts in the province. These two organizations presently receive annual operational grants from the federal government. The Literacy Coalition of New Brunswick receives $75,000 a year and the Fédération de l'alphabétisation receives $22,500. They will not receive those payments under the present changes, with the cuts of $17.2 million over two years in the new budget of our government.

I also read, of course, that there is a huge surplus this year; much bigger than expected. I understand that that surplus is over $6 billion in the first five months of the year. I did a few calculations — I am not good at math — but if you take the $17.2 million and extrapolate that over 12 months, it represents just one tenth of 1 per cent of this surplus. If you take it over two years, since presumably the cut is over two years, it represents just 0.05 per cent of the actual expected surplus. It is really so little.

Honourable senators, I could read lists of beautiful projects. These are beautiful little projects, like story wagons and helping parents read to their children, all in the two languages of New Brunswick. These people are hurt. The budget is only $75,000 for the office of the New Brunswick Coalition of Literacy. I have been in their office many times. There is one full-time member of staff and one part-time person. They pay the rent and they have a phone. It is bare in that office but there is nothing bare in their souls and hearts.

I would like to ask the Leader of the Government in the Senate if she would take this matter back to our Prime Minister and to her cabinet colleagues with a view to discussing it again to see whether this tiny bit of money can be found in the surplus.

**Senator Fox:** Bring it back.

**Hon. Marjory LeBreton (Leader of the Government):** I hasten to say that math was my worst subject in school, so I will not challenge the honourable senator's math.

Under the savings that were found, no agreements were cut. It was clear on the part of the government that we were not cutting existing programs. There was a matter of the provincial and federal governments falling over each other, in many respects, and delivering programs or getting in each other's way.

Honourable senators, as a result of some questions raised by Senator Fairbairn and her statement today, I have already asked the department to check into this matter. The Honourable Senator Trenholme Counsel is saying that the people involved in these programs have been notified that their funding has been cut. I am asking for proof of that. I am asking for someone to produce a letter that a literacy program can no longer function because the funding has been cut.

As I said to Senator Fairbairn in another answer, I really do believe that, with the amount of money that we are setting aside for literacy and skills training, in addition to the money being spent by all the other departments, I do not believe that literacy programs in this country, nor the people who require help and teaching, will suffer as a result of these savings. I am sure that once the misrepresentations and misunderstanding about this matter have been cleared away, that literacy programs will be very well funded, because $81 million is a great deal of money to be directed toward this venture, in addition to the money being spent in other departments.

• (1415)

**Senator Trenholme Counsell:** Honourable senators, perhaps programs that appear on some lists in the federal government will not be cut. The literacy coalitions, where there are people working in this village and that village, and this town and that town, in the various provinces, bring these people together several times a year to information share. Without the coalitions linking it all together, much would be lost. The Literacy Coalition of New Brunswick initiated 11 programs — some of which are fundraising campaigns for the programs. I can assure the honourable leader that much will be lost.

Honourable senators, we all need to come together. Yes, their programs will be funded — hopefully in New Brunswick to the tune of $517,000 per year. Nevertheless, if the coalition and la fédération are lost, there will not be an organization that will bring people together several times a year to share, to grow and to participate in this program. I am not sure whether they received a letter, but they know where their funding came from, namely, the National Literacy Secretariat, and it is their understanding that this funding has been cut.

Can the Leader of the Government in the Senate help us to reach an understanding of what literacy levels mean in Canada? I have some figures regarding adult literacy from la Fédération d'alphabétisation du Nouveau-Brunswick — figures that come from an OECD study and from Human Resources and Social Development.

Honourable senators, in Canada, 52 per cent of Canadian francophones are below level 3; that is, they have level 1 or level 2. I can tell honourable senators what level 3 is, should they wish me to do so. These people do not have strong enough language skills to function. Sadly, 61 per cent of New Brunswick francophones are below level 3. They have either level 1 or level 2. For anglophones in the adult population in Canada, the figure is 38 per cent, and 47 per cent of New Brunswick's anglophones. In the country as a whole, this translates into millions, and I know that that question was asked.

I would ask the Leader of the Government in the Senate to take these figures to heart and to her cabinet so that the grave situation with regard to adult illiteracy is understood and so that it is understood that we need everyone working together.

**Senator LeBreton:** Honourable senators, there is no question that the level of literacy and skills training are not as they should be in Canada. As I think the debate has shown, this is something that has been with us for quite a few decades.

When the honourable senator talks about the various groups that work together in the community, I still have difficulty understanding why $81 million and cooperation between the federal government and the provincial and territorial governments, will, somehow, create a situation where those people cannot and will not continue to work to advance the cause of literacy. I have difficulty getting my head around this. Nevertheless, as a result of previous questions, I am trying to find out exact details as to whether any letters have come out on these programs.

## FUNDING FOR SOCIAL PROGRAMS— GOVERNMENT SURPLUSES

**Hon. Jim Munson:** Honourable senators, my question is to the Leader of the Government in the Senate. You eliminated the Aboriginal smoking cessation program, but you will reduce smoking rates. Her government eliminated funding for palliative care, but they say they will still deliver programs. Her government eliminated literacy funding, but they say that somehow Canadians will become more literate.

• (1420)

What kind of Pollyanna world does the government live in? What kind of magical mystery tour is the government on?

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, the fact is that we did not eliminate any programs; we found savings. The previous government set up the smoking cessation program, and Health Canada officials and people working in the Department of Indian Affairs and Northern Development determined that it did not reach its goals and objectives. The billions of dollars that they are putting into First Nations and Inuit health will work in conjunction with other programs in dealing with the health of Aboriginal Canadians.

We have not cut any programs in palliative care. Furthermore, we are putting $81 million into literacy. We are simply trying to create a situation whereby the federal, provincial and territorial governments can work with a significant amount of money to deliver programs for literacy and skilled workers. It was very much part of our campaign commitment to work with the trades

and to increase the level of skilled workers in Canada because we have a shortage of skilled workers. Literacy is a very important matter for the government.

**Senator Munson:** We have all read the front pages of newspapers these past few days regarding the billion-dollar surplus, just like the Liberal government used to have. One would think that at this particular time the government could show its compassionate side. The money is there. It seems to be that every time we read the Treasury Board business from Mr. Baird or the finance business from Mr. Flaherty, it is always about value for money. Why is it not ever about value for people?

**Senator LeBreton:** These comments come from a former journalist who ended up being the director of communications to a prime minister and a government that drastically cut our health care system to the degree that we are still recovering from it.

**An Hon. Senator:** Shame!

**Senator LeBreton:** Minister Flaherty presented his first budget earlier this year and is committed to not having huge surpluses. As he pointed out the other day, we are only part way through the fiscal year and will be budgeting much more closely to what is actually required by government.

As Senator Segal and others here have reminded us, we are talking about the taxpayers' dollars. Perhaps if there are surpluses, we are collecting too much in taxes.

[*Translation*]

## ELIMINATION OF COURT CHALLENGES PROGRAM

**Hon. Claudette Tardif:** Honourable senators, the Fédération des communautés francophones et acadienne announced today that it filed a petition yesterday with the Federal Court of Canada to declare null and void the government's decision to eliminate funding for the Court Challenges Program, because it believes that:

> ... the federal government's decision to stop funding the Court Challenges Program did not sufficiently take into account the impact on the development and vitality of official language minority communities, nor the government's commitments to linguistic minorities under the *Canadian Charter of Rights and Freedoms* and the *Official Languages Act*.

The claim filed by the Fédération des communautés francophones et acadienne du Canada was supported by the Fédération nationale des conseils scolaires francophones, the Fédération des associations de juristes d'expression française de common law, the Commission nationale des parents francophones and the Quebec Community Groups Network.

• (1425)

Honourable senators will recall that, on October 19, in response to a question, the minister stated that the government consulted many people during its expenditure review process.

Could the minister tell us if consultations were indeed carried out, who was consulted within the official language minority communities, and whether her government gave any thought to the impact that abolishing the Court Challenges Program might have on these communities?

[*English*]

**Hon. Marjory LeBreton (Leader of the Government):** I thank the honourable senator for her question. She has been reading from a release of an organization, and I would be very happy to receive a copy of that from her. The other day when she asked her question, I undertook to obtain information for her.

Off the top of my head, I cannot list all of the different groups with whom the government consulted because the cabinet committee that met over the summer took their advice primarily from the various departments when they were asked to go to the departments and find savings. Therefore, I do not have a list of people who were consulted, but if such a list can be made available I would be more than happy to share it with the honourable senator.

[*Translation*]

**Senator Tardif:** Honourable senators, with respect, those most directly concerned have not been consulted; otherwise, there would have been no petition filed with the Federal Court. I can also say that not only are official language minority communities weakened by that decision, but the strength of our nation's democracy is also affected.

[*English*]

**Senator LeBreton:** As I said the other day — and I am not sure if there is a question there — I will attempt to obtain as much information as possible for the honourable senator on the subject.

# HEALTH

## PROPOSED CANADIAN MENTAL HEALTH COMMISSION

**Hon. Jane Cordy:** My question is for the Leader of the Government in the Senate. It has been almost one year since the release of the proposal of the Standing Senate Committee on Social Affairs, Science and Technology to establish a Canadian mental health commission, and almost nine months since the Conservatives formed the government.

Could the Leader of the Government in the Senate tell this chamber if and when this government plans to establish a Canadian mental health commission?

**Hon. Marjory LeBreton (Leader of the Government):** I thank the honourable senator for her question. I commend her for the valuable work that she has completed on this study, and as a member of the Standing Senate Committee on Social Affairs, Science and Technology.

While running in the last election campaign, the government committed itself to this particular initiative. Indeed, Minister Clement has been in meetings and discussions with the provinces in this regard.

The proposed initiative will require a considerable amount of money. I am quite certain that Minister Clement, while preparing his budgets for the upcoming year, is very much seized of the matter. I am supportive of having this initiative go forward because it is of high importance to many Canadians.

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

**Senator Cordy:** I thank the minister for her answer. The committee, as she knows, has spent hundreds of hours meeting with mental health stakeholders from every province and territory. All the provincial and territorial leaders are in favour of establishing a Canadian mental health commission.

As stated earlier, Minister Clement has said that he is personally in favour of the establishment of such a commission. I know that the Leader of the Government in the Senate is in favour of that as well. Those of us fortunate enough to attend the luncheon during Mental Illness Week know that the people present were most anxious for this commission to be set up.

• (1430)

Recently, the Parliamentary Secretary to the Minister of Health appeared before our committee. When asked about the commission he said that consultations need to occur and appropriate action will be taken when the time comes.

With all the consultations that have already taken place, I am wondering what new consultations are required before the establishment of the commission. Why has it taken so long to begin these consultations? When will this government take action, the right action, and establish this commission?

**Senator LeBreton:** Honourable senators, I thank Senator Cordy for her question.

I was not made aware of the testimony of the parliamentary secretary. However, I can assure the honourable senator that the Minister of Health, Minister Clement, has had, and is continuing to have, consultations. There is no question that the government, and in particular the Minister of Health, are very much aware of the serious consequences of mental health, not only to Canadians and their families, but also to the Canadian economy.

I will undertake to impress upon Minister Clement my own views, of which the honourable senator is very much aware, being that this affects my own family presently. I hope to have a very positive response. I will use the honourable senator's questions to further my arguments to my colleague in cabinet.

**The Hon. the Speaker:** Honourable senators, the time for Question Period has expired.

[*Translation*]

## ANSWER TO ORDER PAPER QUESTION TABLED

### PRIVY COUNCIL— GOVERNOR-IN-COUNCIL APPOINTMENTS

**Hon. Gerald J. Comeau (Deputy Leader of the Government)** tabled the answer to Question No. 2 on the Order Paper—by Senator Downe.

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Gerald J. Comeau (Deputy Leader of the Government):** Honourable senators, I have the honour of presenting delayed answers to two oral questions raised in the Senate. The first response is to a question raised in the Senate by the Honourable Senator Ringuette on May 11, 2006, in regard to the softwood lumber agreement—research and development in the forestry industry. The second response is to a question raised in the Senate by the Honourable Senator Austin on June 20, 2006, in regard to the softwood lumber agreement.

## NATURAL RESOURCES

### SOFTWOOD LUMBER AGREEMENT—RESEARCH AND DEVELOPMENT IN FORESTRY INDUSTRY

(*Response to question raised by Hon. Pierrette Ringuette on May 11, 2006*)

With respect to assistance to the forestry industry, the federal budget provides $400 million over two years to combat the pine beetle infestation, strengthen the long-term competitiveness of the forestry sector and support worker adjustment. It also called for an acceleration of the capital cost allowance for forestry bioenergy.

Through a variety of federal programs to support worker and community adjustment, promote new markets, and facilitate innovation in the industry, the Government of Canada has been supportive of the forest industry. Since 2002, the government has made available $531.5 million in federal assistance to forestry workers, communities and industries.

In addition, the Softwood Lumber Agreement signed in Ottawa on September 12, 2006 eliminates punitive U.S. duties, returns more than US $4.4 billion to producers, provides stability for industry, and spells an end to this long-running dispute and the costly litigation. The return of more than US $4.4 billion marks a significant infusion of capital for the industry and will benefit workers and communities across Canada.

Furthermore, the agreement ensures that lumber produced from logs harvested in the Atlantic Provinces — which are certified by the Maritime Lumber Bureau — will not be subject to border measures.

## INTERNATIONAL TRADE

### SOFTWOOD LUMBER AGREEMENT— PROGRESS OF NEGOTIATIONS

(*Response to question raised by Hon. Jack Austin on June 20, 2006*)

On April 27, the Prime Minister announced that Canada and the United States had reached an agreement in principle providing a basis for ending the longstanding softwood lumber dispute. Subsequently, on September 12, 2006, International Trade Minister David Emerson and U.S. Trade Representative Susan Schwab signed the 2006 Softwood Lumber Agreement in Ottawa.

> One of the key issues for Canada was anti-circumvention. Anti-circumvention provisions are a standard feature of trade agreements. They are meant to ensure that neither party will take action to undermine commitments set out in the agreement.
>
> The anti-circumvention provisions of this Agreement fully protect the right of Canada's provinces to manage their forest resources and grandfather current provincial forest management policies. They also contain a full exemption for British Columbia's Market Pricing System. Provinces can continue to undertake forest management policy reforms, including updates and modifications to their systems, actions or programs for environmental protection, and provide compensation to First Nations to address claims.
>
> The Agreement further provides a limit on the export charge imposed on high value lumber products such as western red cedar lumber, which is primarily produced on the B.C. Coast. The province of B.C. may choose the border measure option that best addresses its economic and commercial situation. In addition, under the terms of the Agreement, independent Canadian lumber remanufacturers, the majority of which are located in B.C., will not pay an export charge on the value-added component of the lumber products they produce.

[*English*]

## QUESTIONS OF PRIVILEGE

### NOTICE REQUIREMENTS—SPEAKER'S RULING

**The Hon. the Speaker:** Honourable senators, before proceeding to Orders of the Day, I wish to render the Speaker's ruling on a point of order relative to notice requirements for questions of privilege.

Honourable senators will recall that last Tuesday, during the time for Senators' Statements, Senator Stratton advised the Senate that he had decided not to proceed with the question of privilege he had raised on Thursday, October 19.

[*Translation*]

Honourable senators will recall that I had reserved my decision on Senator Fraser's point of order which touched on the adequacy of the notice in relation to the alleged breach of privilege claimed by Senator Stratton. This point of order remains outstanding.

Senator Stratton's decision with respect to forsaking his intention to pursue the question of privilege does not eliminate my obligation to deal with this point of order.

[*English*]

Let me briefly summarize elements of the exchanges raised last Thursday with respect to this point of order. Senator Fraser began by objecting that the notices given by Senator Stratton were inadequate because there was too little information about the substance of the privilege complaint. Based on this limited information, she maintained that no senator could know what the question of privilege was about. A number of senators also contributed their views. For his part, Senator Comeau, while generally empathetic with Senator Fraser's position, explained that rule 43, as it is currently written, requires only that a senator give notice "without in any way having to provide the substance of the motion." The senator stated that the rules do not require more than a simple notice. Senator Cools echoed some of the arguments of Senator Fraser. According to Senator Cools, notice ensures that senators are not caught or taken by total surprise. As she explained, the notice should contain enough information to allow senators to prepare themselves should they want to speak on the question of privilege. Senator Austin was also of the view that the "disclosure of a general nature" of the question of privilege is necessary. Finally, Senator Banks, without taking a specific position, pointed to an apparent conflict between rule 43(1) and rule 59(10). I wish to thank all honourable senators who participated in the exchanges on this point of order.

[*Translation*]

Since the time when the point of order was first raised, I have taken the opportunity to study the rules, read the authorities and examine recent practices to inform myself as best I can about how rule 43 should be understood and applied. The specific issue at hand is whether Senator Stratton's written and oral notices were sufficient to satisfy the requirements of Rule 43.

[*English*]

In assessing the meaning of notice, which is central to the determination of this point of order, it is essential to look to the purpose of the particular notice required. I feel it appropriate to consider not just rule 43 but other Senate rules, as well as current practices that provide a better sense of what notice is meant to be and the purposes that it serves. Part VI of the *Rules of the Senate*, from rule 56 through 59, is all about notices. Not only do these rules identify the period of a notice, either one or two days when notice is required at all, but they also confirm that the content of the notice must be meaningful. For example, as rule 56(1) states:

> When a Senator wishes to give notice of an inquiry or a substantive motion, the Senator shall reduce the notice to writing, sign it, read it during a sitting of the Senate ... and send it forthwith to the Clerk at the Table.

Similarly, rule 56(2) requires that a senator seeking to propose an inquiry shall "as part of the notice under this rule give notice that he will call the attention of the Senate to the matter to be inquired into." It is not adequate, as a notice, to state simply an intention to move a motion or to propose an inquiry. To suggest otherwise would seriously distort the meaning and intent of the notice. As an example, who would accept as adequate notice a senator's declaration to move a motion without any indication of its content, or to have a committee undertake a study without knowing what it was about? Notice must include some content indicating the subject being proposed for debate and decision.

[*Translation*]

The merit of this proposition is evident from any review of the authorities that are often used to guide the understanding of Senate procedures. Marleau-Montpetit's *House of Commons Procedure and Practice* at page 464, explains that the purpose of notice "is to provide Members and the House with some prior warning so that they are not called upon to consider a matter unexpectedly."

Motions for which notice is routinely required usually seek to solicit a decision of the Senate, either to order something be done or to express a judgment on a particular matter. Such motions are always subject to debate and the notice is required in order to allow parliamentarians to inform themselves of this upcoming debate and to prepare themselves should they wish to participate in the debate.

In a ruling of June 21, 1995, Speaker Molgat reiterated the explanation for notice:

[*English*]

> The purpose of giving notice is to enable honourable senators to know what is coming so that they can have an opportunity to prepare. Why else would there be notice? They must have an opportunity to get themselves ready for the discussion. It is not meant to delay the work of the Senate. It is simply meant to bring order.

• (1440)

As to the specific notice requirements for a question of privilege, it must be stressed that the rules are somewhat different as to the process to be followed. As already noted, a senator seeking to raise a question of privilege must deliver a written notice to the Clerk's office three hours before a sitting in order to allow enough time to distribute it to all senators. In addition, the senator must provide oral notice during Senators' Statements. This double notice requirement reflects the importance to be accorded any claim to a question of privilege which a senator wishes to expedite under rule 43. In addition, the requirements were deliberately imposed in order to allow reasonable preparation for consideration of the question of privilege to be considered the same day. This, in fact, is the exceptional aspect of the notice. The written notice alerts senators of the possibility that a certain question of privilege may be brought to the attention of the Senate. The oral notice confirms that a senator intends to pursue the matter at the conclusion of business under Orders of the Day. This is why I feel that the proper reading of the rule demands that the notice be sufficiently explanatory and comprehensive. In other words, the notice must clearly identify the matter that will be raised as a question of privilege.

[*Translation*]

I have reviewed past notices since the inception of rule 43 in 1991. In all cases that I have seen, Senators had provided an indication of the claimed question of privilege. In one case, the Senator did not adequately indicate the nature of the question of the privilege in the oral notice, but the written notice was clear enough about the complaint and no point of order was raised to challenge the oral notice. In another example, I have discovered a situation where the written notice was not followed by the oral notice, presumably because the Senator had decided to abandon the matter as a question of privilege. In all other cases reviewed thus far, both notices indicated the subject of the complaint giving rise to the question of privilege.

In this particular case, neither the written nor the oral notice provided by Senator Stratton dealt with the subject matter of the question of privilege. They simply stated that the Senator was going to raise a question involving, "a contempt of Parliament" that "constitutes an affront to the privileges of every senator and of this place". These notices were insufficient. Accordingly, the point of order raised by Senator Fraser is well founded and, therefore, it would not have been possible for Senator Stratton to proceed with his question of privilege under rule 43 based on the inadequate notice provided.

[*English*]

Before sitting down, I wish to deal with two other issues associated with this point of order. First, I want to refer to the attempt made by Senator Stratton to present his motion on the question of privilege at the close of last Thursday's sitting. The senator explained that he was doing this in accordance with rule 59(10), which allows for raising a question of privilege without notice. Senator Fraser immediately intervened to object to the proceeding and I then reminded the Senate of the fact that I had already reserved my decision, and that it would be out of order to proceed with the alleged question of privilege at this time.

[*Translation*]

When Senator Fraser spoke in objection to what Senator Stratton attempted to do, she explained that rule 59(10) was probably designed to deal with circumstances arising in the course of an actual sitting. As she said, "That is the only explanation I can find for the fact that rule 59(10) exists." As part of my investigation, I looked at the work on the rule changes made in 1991. Before those changes were adopted, there was no mechanism to raise a question of privilege on notice. The old rule simply provided that:

[*English*]

> When a matter or question directly concerning the privileges of the Senate, of any committee thereof, or of any Senator, has arisen, a motion calling upon the Senate to take action thereon may be moved without notice and, until decided, shall, unless the debate be adjourned, suspend the consideration of other motions and of the Orders of the Day.

Rule 59(10) is clearly linked to this old rule that has been completely displaced by current rule 43. What I suspect happened is that in making the consequential changes to the rules, this particular change was not properly adjusted, either to delete it entirely or to modify it to explain under what conditions a question of privilege could be raised without notice. I suspect that this is one of perhaps several rules that remain inconsistent with other rules, or that are not easy to understand. It might be appropriate at some point to have the Standing Committee on Rules, Procedures and the Rights of Parliament look into this matter and clean up any of the anomalies and inconsistencies still in our rules.

While the Rules Committee is looking at that problem, it might also look at the second issue that I want to mention. Last Thursday, just after Senator Stratton gave oral notice during Senators' Statements, Senator Fraser sought to challenge the notice on a point of order. I responded by explaining that it was not possible to raise a point of order at that time. When I made this statement, I was working under the impression that Senators' Statements are part of the daily routine of business and that, in

accordance with rule 23(1), points of order or questions of privilege are prohibited until we come to Orders of the Day. This, I think, is a view which is widely accepted and which appears to be reinforced by some of the language of our rules and operating documents, including the Order Paper. As I was preparing this decision, however, I looked more closely at the Rules of the Senate and I have come to a different position. Contrary to what I had previously believed, Senators' Statements are not, in fact, part of the daily routine of business. This is evident from a careful reading of rule 23(6). The fifteen minutes allocated to Senators' Statements are not part of the thirty minutes allowed for the routine of business, which begins with the Tabling of Documents and continues through Presentation of Petitions, and is called immediately prior to Question Period. My revised understanding as to the proper boundaries of the routine of business has been supported by a previous Speaker's ruling made December 11, 1997.

Nonetheless, I feel that some of the rules could be more clearly written and perhaps the Rules Committee might undertake to do this so as to reduce some of the confusion and misunderstanding that sometimes occurs. In this respect, I share some of the sentiments that were expressed by Senator Comeau and Senator Cools during the exchanges on this point of order last Thursday.

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• (1450)

# ORDERS OF THE DAY

## FIRST NATIONS GOVERNMENT RECOGNITION BILL

SECOND READING—DEBATE CONTINUED

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, providing for the Crown's recognition of self-governing First Nations of Canada.—(*Honourable Senator Austin, P.C.*)

**Hon. Joan Fraser (Deputy Leader of the Opposition):** Honourable senators, some of you will recall an exchange last week when Senator St. Germain was speaking with his usual passion about Aboriginal rights in general, and in response to a question from Senator Joyal, also spoke with passion about his bill.

**Senator Prud'homme:** We are all passionate here.

**Senator Fraser:** We are all passionate here, Senator Prud'homme is absolutely right. We have a great passion for the public interest of all Canadians.

Clearly, Senator St. Germain's bill is addressing an extraordinarily important and complex topic. Unfortunately, it has not yet had the full debate in this chamber that I hope it will have, and I expect most of the substance of that debate, or all of the real substance of that debate, to come from senators far more knowledgeable than I about these matters. As you know, honourable senators, we have all been heavily burdened with considerations of other immediate matters, particularly matters of government business in recent weeks. I do not think that is an excuse for our failure to give Senator St. Germain's bill proper attention, but I do believe that it is an explanation for it.

Certainly, I would not wish any member of Canada's Aboriginal peoples to believe that we do not take seriously the matter of the recognition of self-governing First Nations of Canada. The devil is always in the details, and those details will, I assume, be examined in great detail when this bill reaches committee. In the meantime, it is my earnest hope that we can expect some knowledgeable contributions to this debate in this chamber. I look forward to those contributions.

I must say my own view of First Nations self-government is that it is long overdue. The only problem with the devil being in the details is that senators will need to know everything about the way in which the Indian Act works and the Constitution works.

I eagerly await, therefore, the continuation of this debate. The real reason I stood today was simply to offer assurance that, on our side, we do take these matters very seriously and do intend to give them very serious consideration.

Therefore, with your indulgence, honourable senators, I move the adjournment of the debate in the name of Senator Austin.

On motion of Senator Fraser, for Senator Austin, debate adjourned.

## SCOUTS CANADA

PRIVATE BILL TO AMEND ACT OF INCORPORATION—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Di Nino, seconded by the Honourable Senator Cochrane, for the second reading of Bill S-1001, respecting Scouts Canada.—(*Honourable Senator Banks*)

**Hon. Tommy Banks:** Honourable senators will remember that yesterday I apologized to Senator Di Nino for not having spoken on this bill prior to yesterday and promised that I would do so today, and I will.

I will not burden the debate on this bill at this point with details, but before the bill moves to committee for consideration, I want to place on the record that there are people within the Scouting movement in Canada who have reservations about this bill. Senators on this side have asked me about this as well. The bill is presented, perhaps fairly, as a matter of mere housekeeping, and it may well be, but there are those who are involved in the Scouting movement who think that that is not so.

Just briefly, to put on the record, I want to read to you some very small parts of letters that I received from Garth Fitsner, Ted Claxton, Dave Upham and Stan Barrie about this matter. This is so that you will know why I intend to send these letters to the

committee that receives this report, in the very earnest hope that the committee will take the time to hear from these people before it proceeds with its consideration otherwise of the bill.

The following are excerpts from these letters: "The lack of honest, open consultation in the changes to Scouting in Canada has led to the demise of numerous scout troops."

A further quotation: "Although it is asserted by our organization that this is a mere housekeeping bill, the legal effect of a repeal of the Boy Scouts of Canada Act and the substitution therefor of this bill as presented to the Senate will give a whole new mandate to the governance of our organization. The passage of the new bill in the form presented will effectively foreclose democratic participation in Scouts Canada by the membership and effectively grant to a narrow constituency control over the Scouting movement in Canada."

Honourable senators, we must remember that the Scouting movement in Canada is now a corporation, but it derives from a royal charter, which was its first form. That must be borne in mind.

A further quotation: "We assert that Scouts Canada is attempting to entrench an undemocratic system." I could go on.

I will satisfy myself with one remaining quotation: "Scouts Canada is an association which was granted corporate status by royal charter. The grant of corporate structure does not do away with the fundamentals of membership in an association. This is recognized in the Corporations Act, dealing with a corporation without share capital, such as this one, and in the Interpretation Act. In this case, Parliament is the ultimate authority."

That is true. That is why the act is before us.

In closing, I want to make two quotations from Lord Baden-Powell: The first says: "What we want is a broad-minded leadership rather than restrictive dictatorship. A democracy founded upon goodwill." He said that in 1921.

Lord Baden-Powell said: "Scouting is a game that is designed to create better citizens."

I believe this letter says that Bill S-1001 will work against that aim, and therefore urge the more careful consideration of honourable senators. I will send these names, addresses and letters to the committee that receives this bill for consideration, in the earnest hope that they will consult with these people to a reasonable extent and take their views into account.

**The Hon. the Speaker:** I will ask the house, are honourable senators ready for the question on second reading?

**Hon. Senators:** Question!

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

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

[ Senator Banks ]

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 Legal and Constitutional Affairs.

• (1500)

[*Translation*]

## NATIONAL DEFENCE ACT

### MOTION CALLING UPON GOVERNMENT TO PROCLAIM SECTION 80 OF THE PUBLIC SAFETY ACT, 2002— DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Segal, seconded by the Honourable Senator Di Nino,
>
> That the Senate calls upon the Government of Canada:
>
> (*a*) to cause the bringing into force of section 80 of the *Public Safety Act, 2002*, Chapter 15 of the Statutes of Canada 2004, assented to on May 6, 2004, which amends the *National Defence Act* by adding a new Part VII dealing with the reinstatement in civil employment of officers and non-commissioned members of the reserve force;
>
> (*b*) to consult with the provincial governments as provided in paragraph 285.13(*a*) of the new Part VII with respect the implementation of that Part; and
>
> (*c*) to take appropriate measures in order for the provisions under the new Part VII to apply to all reservists who voluntarily participate in a military exercise or an overseas operation, and not to limit the provisions to those reservists who are called out on service in respect of an emergency.—(*Honourable Senator Banks*)

**Hon. Roméo Antonius Dallaire:** Honourable senators, it is with great interest that I rise today to speak to the motion of Senator Segal calling upon the Government of Canada to bring into force section 80 of the Public Safety Act, 2002, and to enact the provisions required to ensure the reinstatement in civil employment of all Canadian Forces reservists participating in operational duties.

As you all know, since my arrival in the Senate I have taken an interest in the health of our Canadian Forces, as do all of you, and I am a stalwart supporter of their rights, once again as are all of you. The Canadian Forces are quickly forgotten when the time comes to adopt social programs for the general population. They are treated differently than the civilian population, sometimes not as well.

Yet, they are the ones we can always count on to be there to defend the interests of our nation or promote world peace. They too deserve some benefits.

Honourable senators, the Honourable Senator Segal is proposing that we further improve conditions for our Canadian Forces, and our reserve forces — militia, naval reserve and air reserve — in particular. The reserve is made up of citizens who, in addition to their careers or studies, decide to give up some of their free time to train in the reserve and, eventually, be called upon, like their regular force counterparts, to participate in missions overseas to promote peace and human rights around the world.

Canada's reserve has been around for a very long time. It was established in 1855, and was combined with the regular force, established in 1871 and based at La Citadelle in Quebec City and Fort Frontenac in Kingston, to officially become the Canadian Forces' total force. Together, the reserve force and the regular force represent an essential component of the Canadian Forces, as an integral part of the "total force model", of the Canadian Forces as a whole. One cannot think of the regular force without thinking of the reserve force, whose primary role, according to the 1994 White Paper on Defence Policy, is "the augmentation, sustainment, and support of deployed forces ". Still today, the reserve force plays a key role in missions Canada participates in.

Reservists — be they navy, army or air force — currently represent approximately 40 per cent of the Canadian Forces, for a total of 22,000 reservists out of the 52,330 available for deployment. During the operations in the Medak Pocket in the former Yugoslavia, a few years ago, 40 per cent of the troops involved in these warfare operations were reservists.

Since 1992, at least 20 per cent of the participants in all missions have been reservists deployed with the regular forces in various theatres of operation, including humanitarian disasters and war.

Since 2000, more than 4,000 reservists have been deployed in missions in Afghanistan, Bosnia, Croatia, Rwanda, Haiti and Somalia.

Even today, 15 per cent of the 2,500 troops in Afghanistan are reservists.

I would like to discuss this issue briefly so we all understand how the role of our reservists has changed over time and the major role they will be asked to play in the years to come.

Since the end of the Cold War, Canadian Forces missions have changed significantly. We have witnessed and continue to witness a sea change in international military intervention. Canada, known for having created the concept of peacekeeping in 1956 under Lester B. Pearson, became heavily involved in subsequent peacekeeping operations, such as in Cyprus, during the Gulf War, in Somalia, the Balkans, Rwanda and, most recently, Afghanistan.

Sadly, the Pearson peacekeeping era came to an end after the Cold War. Since the end of the 80s, we have seen a resurgence of intra-state conflicts — civil wars that have often ended in massacres and humanitarian disasters.

Given this new reality, the Canadian Forces have had to adapt. More and more frequently, our forces are finding themselves involved, not in cease-fire observation, but in dangerous missions where peace is not yet established and where we have to play a major role in putting an end to armed conflicts, as is the case in Afghanistan and, potentially, Darfur. We are now participating in missions to establish a certain degree of security, an atmosphere of security, human security.

The reserves are therefore playing a greater role in these complex new missions.

[*English*]

Moreover, within this new complex environment, the Government of Canada has committed itself to continue to play a role of leading middle power and to contribute to the building of world peace and security.

According to the 2006 budget, the current government's objective is to "expand the regular force to 75,000 personnel and add 10,000 reservists." This shows the significance that the reservists have in the new defence policy and the government's commitment to operations.

One of these measures that Minister O'Connor and Chief of Defence Staff General Hillier are considering is actually to rely more extensively on reservists, that is, increasing the percentage of reservists as part of the deployed forces overseas.

Undeniably, reservists are an essential component in overseas missions, and we will require more and more of them in the forthcoming years in those new peace and security missions.

Although a large proportion of reservists are students at the cégep and undergraduate levels, and even the odd one at the senior high school level, those with experience and qualifications to achieve non-commissioned ranks and junior officer ranks are often from the Canadian workforce.

Hiring 10,000 more reservists will not happen overnight. One of the ways to attract more civilians to the reserve force is to offer them what Senator Segal calls "peace of mind," that is, the assurance that, upon their return from voluntary service overseas, reservists know that the job they had before volunteering in the mission was maintained for them — in other words, to offer them job protection through way of legislation.

Such measures already exist in Canadian law but have not been brought into force by the Governor-in-Council. Section 80 of the Public Safety Act, 2002, which amends the National Defence Act by adding a new Part 7, deals with the reinstatement in civil employment of the reserve force members but only in the case of national emergency.

[*Translation*]

The National Defence Act was in fact amended in 2004, with the passing of the Public Safety Act of 2002, which was assented to on May 6, 2004. However, it seems that section 80 of the Public Safety Act, concerning protection for reservists' civilian jobs, was not proclaimed by the Governor-in-Council. The reasons given at the time were that section 80 would not be

proclaimed until the federal government had consulted the provincial governments. Much to my dismay, consultations with the provincial governments have made no real progress.

In other words, this measure, which was intended to protect the employment of reservists while they are on a tour of duty, is still not in force two years later.

Furthermore, there is another problem involving section 80. As defined in subsection 1 of part 7 of the Public Safety Act, if adopted, the reinstatement of civilian jobs for reservists will apply only in cases where a member of the reserve force is compulsorily called out in a national emergency. Section 2 of the National Defence Act defines an emergency as "an insurrection, riot, invasion, armed conflict or war".

However, it has been at least 60 years since any members of the reserve force have been compulsorily called because of an emergency, that is, since the Second World War. Accordingly, even if it were to come into effect, this section would almost never apply.

We must bear in mind that this section was conceived in the aftermath of September 11, 2001, in order to respond to any potential terrorist threats on our territory. Such a threat could indeed give rise to a state of emergency and a compulsory call for our reserve forces.

• (1510)

That is not the case for Canada's participation in a peace or stabilization mission such as that in Afghanistan or elsewhere in the world. A state of emergency could only be declared if Canada were directly threatened. Consequently, of what use is it to offer job protection to reservists called out to deal with national emergencies, which are very unlikely to occur? Why not offer this job protection to those who participate in overseas missions?

That is what is being proposed by Senator Segal. He is proposing that the Government of Canada amend section 80 of the Public Safety Act so that it applies at all times to all reservists who voluntarily participate in these new high-risk missions, whether or not they constitute a national emergency.

[*English*]

Some will argue that it is the role of the Canadian Forces Liaison Council to promote the work that they are doing for Canadian reservists in order for employers to voluntarily accept to maintain the employment of reservists. This council is made up of presidents and CEOs of several prominent firms and companies. Most volunteer their time to advance the case of special employment of reservists. In that sense, the council has done some extraordinary work in bringing to the attention of the employers the role of the reservists.

However, much is still missing. The council mediates more than 100 issues a year between reservists and their employers. It is a sort of ombudsman role for job protection versus an instrument for job security. Clearly, the liaison council is a great institution for the promotion of reservists' rights, but it is far too limited in scope and executive power to actually implement, support and ultimately protect. The council does not have the power to bind employers to maintain the job of a reservist. It is completely voluntary and, therefore, many employers choose not to comply with the recommendations.

Despite some concerns that having such legislation might create discrimination when it comes to hiring reservists, the third major report of the Standing Senate Committee on National Security and Defence, which was released a few weeks ago and was just sent back to the committee, concluded that there is an eventual deficiency here in the protection for reservists' employment.

The report states:

> If the reserve really is part of the total force, and if, as the Chief of the Defence Staff has stated, the aim is to have all members of the Canadian Forces available for overseas deployment, the committee believes that fundamental changes must be considered to the way the reserves function. Some of those changes might include:
>
> > If reservists are required to serve if called out, then some sort of job protection is essential. It would be the task of the government to ensure job protection for all reservists who are called out to support their country.

In its recommendations, the committee was also clear. It recommends:

> That the government redefines the terms and conditions of service for reserves taking these views into account.

[*Translation*]

I would like to close by mentioning that Canada would not be the only country to provide this type of job security for its reservists.

Similar measures have been in force in Australia, the United States and the United Kingdom for several years and require employers to keep jobs open for reservists sent overseas to serve their country.

In Australia the law is particularly strict in that it establishes fines for employers who attempt to fire reservists upon their return or who are found guilty of hiring practices that discriminate against reservists. However, employers also receive tax benefits while the reservist is on duty, which represents the advantage of the practice.

This is one example that shows that we are not the only ones asking these fundamental questions about the future employment and security of our reservists. Even the Minister of Defence, the former General O'Connor, is presently studying models of employment security for reservists adopted elsewhere in the world in order to deal with the growing concerns of members of the reserves.

Our troops always volunteered to serve their country. Conscription, which was used toward the end of the Second World War, was a painful exception that tore our country apart. Nevertheless, it is important to point out that no Second World War conscripts, who were cruelly labelled zombies at the time, served overseas. They all served on Canadian soil, allowing the volunteers to serve in Europe.

Enlistment became voluntary and recruitment of regular forces more complex and more competitive with time. Our recruits are brave men and women — increasingly, women — who, in addition to working or going to school, are enrolling voluntarily and risking their lives or even their future, if they are injured, in order to take part in these new missions to safeguard human rights, democracy and gender equality in countries that are imploding.

Canada has to wake up, recognize the new reality facing the Canadian Forces and adjust its needs and the need for these people accordingly. I urge you, honourable senators, to pass this motion.

[*English*]

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

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

It is moved by the Honourable Senator Banks —

**Hon. Tommy Banks:** Not adjourn, continue.

**The Hon. the Speaker:** You wish to speak now?

**Senator Banks:** I noticed from Your Honour's having risen that I think Senator Dallaire had used up his time. In light of Your Honour's admonition yesterday, I am not suggesting that Senator Dallaire answer questions. Before I say anything, I want to make it clear that the senator is right. The important contributions that are made to Canada's military efforts in all respects by members of the reserve are immeasurable. We could not be doing with the Canadian Forces the things we now do without the active participation of the reserve forces.

If I understand the thrust of Senator Segal's motion, it is to provide protection to those people who go on active service with the reserves, whether to fight a forest fire or to fight in Afghanistan, or wherever else, so that when they return from having done that duty, their job is still there for them. On the face of it, that is a perfectly reasonable proposition. As it applies to those members of the reserves who go on to active duty, there is no doubting it is right. On the face of it, there is no doubt about the unfairness of a situation where someone goes to do their duty and places their lives in danger for their country, and then comes back and finds out that they no longer have a job waiting for them. On the face of it, that seems to be unreasonable.

As Senator Dallaire noted, there are reserves and there are reserves. There are reserves that can be called up, the A-list, which is comprised of people who were in the regular forces and are now in the reserve force. They can be called into action. However, there is another, larger group of the reserves who are volunteers. They receive the pay and become trained to a certain level, but when the call comes they can say no. I know that is a very sensitive point. I want to call honourable senators' attention to that part of the present report to which Senator Dallaire referred. There was a condition precedent for that job protection. Equality of pay is also referred to in that report.

• (1520)

The condition precedent is that when a volunteer joins the reserve forces, she or he should join with the expectation that when they have reached the required level of training and capacity, they are susceptible to being called into active service, having accepted — to use the old term — the Queen's farthing.

The rude question we addressed in the report is: If that is not so, then why are we investing significant amounts of public money, thousands and thousands of dollars, in outfitting, training and paying the volunteer reserve members to do a job which, when it arrives, they can decline? Most of them, perhaps, do not decline, but many do.

I wanted to point out to senators that we made that careful condition precedent in the recommendation about equality of pay and guarantee of jobs. It is a call to duty: You are now leaving. I do not care if your plumbing job requires you to be there. You are now leaving to fight this fire or to fight that war.

In that event, when someone returns from having done that duty, he must have job protection and equality of pay. The question that is raised is: Must we have job protection and equality of pay for those people who join the reserves who do not answer that call? To talk about money, to be crass, should we spend public money on outfitting, training and paying those members of the reserves without the expectation that, when called upon they will answer that call? That as opposed to the situation which obtains now, which is that they can say, "I ain't going."

I call senators' attention to that aspect of the report and to the things that Senator Dallaire referred to, and I defer to a call for dealing with the motion.

**Senator Dallaire:** The honourable senator is right. There is a supplementary reserve list. When someone is released from the Canadian Forces and he is medically fit, he can volunteer to stay on the five-year supplementary reserve. That should also be looked at as automatic. He stays on the list and has the protection.

With regard to the reserve list, the general reserve employment, on average 1 to 6 per cent of those whom we call to volunteer actually do volunteer. For many of them, the reason is academics, and for others it is employment or compassionate reasons. In the forces, there are three or four people available to produce one volunteer at a certain point in time. Those who have not responded on a certain occasion might respond the next time because they have finished their academic studies, for example.

Volunteer work is the essence of the philosophy of our citizenry and of the military. We nearly ripped this country apart twice by trying to impose volunteerism, if you remember, in World War I and World War II. The bill reflects that those who are called upon to volunteer, and if they volunteer, will get the protection. The people who do not volunteer at that time do not get the protection, but should on the subsequent call. We are into this business of *ad vitam eternam*, the way it looks, that if they are called forward and by then they have a job, they would be protected at that time. Are we in agreement on that?

**Senator Banks:** I am in agreement, and I do not see how anyone could reasonably argue that a woman or man, having answered the call, having volunteered and having gone into active service on the line of fire or war or civil disorder, whatever it may be, could possibly expect anything less from the country and from his or her employer than to be reinstated in their job, or, while we are talking about it, receive the same pay as the person next to him on the job, who may be a member of the regular forces, while that reserve member is doing the same job in the same place in the same way. I do not think that anyone could reasonably argue with that.

I merely wanted to call the attention of senators to the fact that there is a very large question out there. Using the honourable senator's numbers as a rough example, for the 10,000 new recruits who will be added to the reserve forces, we will spend the same amount of money and time outfitting, training and paying those 10,000 people. If we have a reasonable expectation of only being able, in the event, to call upon 300 of them, how much sense does it make to have spent the money on raising the level of capacity of those 9,700 people in the hope that they might be available the next time?

It is a rude question, but it is one that we need to ask. It does not obtain directly to Senator Segal's motion, to which the honourable senator has spoken, which, as he has pointed out, deals with people who do volunteer. I merely wanted to call that to the attention of honourable senators.

**Hon. Michael A. Meighen:** This is for my own clarification and perhaps for that of other honourable senators as well. We will see if my memory coincides with that of Senator Banks. I believe there was one "out," if you will, that the committee proposed with respect to those who join the reserves and undertake to serve if and when called, and that was similar to jury duty. If they could demonstrate that there was a good and valid reason why they should not have to fulfill their obligation to go, then they could be excused, after inquiry. I think that is what we said.

**Senator Banks:** There have to be those kinds of exemptions. A single mother, for example, who is a member of the reserve, however willing, obviously would have to look twice at being sent out of country for six months. There are all kinds of gradations and things that come after the general thrust of the matter, but that is certainly one of the exceptions which we carefully considered. The analogy to jury duty is excellent.

On motion of Senator Fraser, debate adjourned.

## HUMAN RIGHTS

### COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Leave having been given to revert to Motions:

**Hon. A. Raynell Andreychuk,** Chairman of the Standing Senate Committee on Human Rights, with leave of the Senate and notwithstanding rule 58(1)(*a*), moved:

> That the Standing Senate Committee on Human Rights have power to sit on Monday, October 30, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

**Hon. Senators:** Agreed.

**Senator Andreychuk:** Perhaps I can explain. The committee had already sent out notices that we would be sitting from 4:00 to 7:00, in our usual time slot, and we have been attempting to have Minister Prentice appear before the committee. Unfortunately, he chairs the Operations Committee and cannot come until about 5:45 or 6:00. We want him and Mr. Fontaine to appear before the committee to address the reports that we have completed on Aboriginal women. This particular slot is very timely, and if we delay any further, the reasons why we want to call him may fall away. We anticipate that we would be through before 7:00.

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

Motion agreed to.

• (1530)

## ADJOURNMENT

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

> That when the Senate adjourns today, it do stand adjourned until Monday, October 30, 2006, at 6 p.m., and that rule 13(1) be suspended in relation thereto.

**The Hon. the Speaker:** Is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

[*Translation*]

## BUSINESS OF THE SENATE

**Hon. Gerald J. Comeau (Deputy Leader of the Government):** Honourable senators, with leave of the Senate, I move:

> That the Senate do now adjourn during pleasure, to reassemble at the call of the chair with a 15-minute bell.

[*English*]

I am proposing that there be a suspension to the call of the chair and that the six o'clock rule be suspended.

**The Hon. the Speaker:** Honourable senators, because we do not often deal with a situation such as this, and so that honourable senators understand, this motion says that I will be leaving the chair. When I receive the signal from the chamber, from the Leader of the Government and the Leader of the Opposition, the bell will ring for 15 minutes, at which point I will return to the chair. We are dealing with an adjournment at pleasure.

I will formally put the motion and then it will be subject to debate.

It was moved by the Honourable Senator Comeau, seconded by the Honourable Senator Stratton, that the Senate do now adjourn during pleasure to reassemble at the call of the chair with a 15-minute bell.

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

**Hon. Joan Fraser (Deputy Leader of the Opposition):** Honourable senators, the Deputy Leader of the Government has consulted with both me and the Leader of the Opposition with respect to this.

However, for the benefit of all honourable senators, I shall ask him to explain exactly why he is making this comparatively unusual motion and when he thinks that it might be the Speaker's pleasure to summon us back.

**Senator Comeau:** Thank you very much for allowing me the opportunity to explain.

We had been hoping to receive the report of the Standing Senate Committee on Legal and Constitutional Affairs with matters relating to Bill C-2 at a much earlier time.

As a result of the very long days that were put in yesterday and the day before on many motions, staff members are in the process of drafting these motions and amendments to the bill. We expect that the report will be ready for presentation in the Senate by roughly 5:00 p.m. or 5:30 p.m. this afternoon.

Honourable senators will appreciate, I am sure, that there were several amendments, from the government side, of a technical nature, and from the other side, of a less technical nature. Therefore, in order to assure that these amendments are properly written in both official languages, it will take time.

With this in mind, and because we have gone through the Order Paper and the scroll, once we return, it will be a matter of presentation of the report, at which time the Senate will adjourn until Monday at 6 p.m.

Senator Corbin has just indicated that we will need unanimous consent.

**The Hon. the Speaker:** Is it equally understood by the house that the chair will be operating on the basis that we are not seeing the clock at six o'clock?

**Senator Comeau:** Yes.

**The Hon. the Speaker:** Whenever I receive advice from the leadership, we will find pleasure to return?

**Senator Comeau:** Agreed.

**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?

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned during pleasure.

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• (2030)

The sitting was resumed.

## FEDERAL ACCOUNTABILITY BILL

### REPORT OF COMMITTEE

Leave having been given to revert to Presentation of Reports from Standing or Special Committees:

**Hon. Terry Stratton,** for Senator Oliver, Chairman of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, October 26, 2006

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

### FOURTH REPORT

Your Committee, to which was referred Bill C-2, An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability, has, in obedience to the Order of Reference of Tuesday, the 27th of June, 2006, examined the said Bill and now reports the same with the following amendments:

1. *Clause 2, page 3*: Replace line 35 with the following:

"missioner;

(*d.1*) a ministerial appointee whose appointment is approved by the Governor in Council; and".

2. *Clause 2, page 4*: Replace line 5 with the following:

"Governor in Council may appoint a person, but does not include the Senate or the House of Commons.".

3. *Clause 2, page 4*:

(*a*) Replace line 20 with the following:

"(*d*) a Governor in Council appointee, or a ministerial appointee whose appointment is approved by the Governor in Council, who"; and

(*b*) Replace line 24 with the following:

"(*e*) a Governor in Council appointee, or a ministerial appointee whose appointment is approved by the Governor in Council, who".

4. *Clause 2, page 5*:

(*a*) Replace lines 26 and 27 with the following:

"**4.** (1) For the purposes of this Act, a public office holder is in an actual conflict of interest when he", and

(*b*) Add after line 32 the following:

"(2) For the purposes of this Act, a public office holder is in a potential conflict of interest when the public office holder's ability to exercise an official power, duty or function could be influenced by his or her private interests or those of his or her relatives or friends, or could be improperly influenced by another person's private interests.

(3) For the purposes of this Act, a public office holder is in an apparent conflict of interest when there is a reasonable perception, which a reasonably well-informed person could properly have, that the public office holder's ability to exercise an official power, duty or function must have been influenced by his or her private interests or those of his or her relatives or friends, or must have been improperly influenced by another person's private interests.".

5. *Clause 2, page 6*:

(*a*) Replace lines 3 and 4 with the following:

"prevent the public office holder from being in an actual, apparent or potential conflict of interest.";

(*b*) Replace lines 10 and 11 with the following:

"the decision, he or she would be in an actual, apparent or potential conflict of interest.".

6. *Clause 2, page 6*:

(*a*) Replace line 5 with the following:

"**6.** No public office holder shall make a"; and

(*b*) Delete lines 12 to 17.

7. *Clause 2, page 7*: Replace line 9 with the following:

"(*b*) that is given by a relative or close personal friend; or".

8. *Clause 2, page 9*: Replace lines 39 and 40 with the following:

"it would place the public office holder in an actual, apparent or potential conflict of interest.".

9. *Clause 2, page 12*: Replace line 10 with the following:

"he or she would be in an actual, apparent or potential conflict of interest.".

10. *Clause 2, page 13*: Replace line 37 with the following:

"in a 12-month period, the reporting.".

11. *Clause 2, page 14*: Replace line 16 with the following:

"recused himself or herself to avoid an actual, apparent or potential conflict of".

12. *Clause 2, page 14*: Replace line 21 with the following:

"identify the actual, apparent or potential conflict of interest that was avoided.".

13. *Clause 2, page 14*: Replace line 24 with the following:

"is appointed as a public office holder,".

14. *Clause 2, page 15*: Replace line 1 with the following:

"or more, other than one from a relative,".

15. *Clause 2, page 18*: Replace line 25 with the following:

"actual, apparent or potential conflict of interest in relation to the reporting".

16. *Clause 2, page 22*:

(*a*) Replace line 1 with the following:

"**38.** (1) The Commissioner may, on application, exempt"; and

(*b*) Replace lines 22 to 27 with the following:

"(3) The decision made by the Commissioner shall be communicated in writing to the person who applied for the exemption.

(4) If the Commissioner has granted an exemption in accordance with this section, the Commissioner shall publish the decision and the reasons in the public registry maintained under section 51.".

17. *Clause 2, page 24*: Replace, in the English version, line 4 with the following:

"a person under section 39 affects any obligation or".

18. *Clause 2, page 24*:

(*a*) Replace line 7 with the following:

"**43.** (1) In addition to carrying out his or her";

(*b*) Replace line 10 with the following:

"(*a*) provide advice to the Prime"; and

(*c*) Add after line 17 the following:

"(2) Subject to subsection (4), advice under paragraph (1)(*a*) may be provided on a confidential basis.

(3) If, in the course of responding to a request by the Prime Minister for advice under paragraph (1)(*a*), the Commissioner concludes that a public office holder has contravened this Act, the Commissioner shall provide the Prime Minister with a report setting out the facts in relation to the contravention as well as the Commissioner's analysis and conclusions.

(4) The Commissioner shall, at the same time that the report is provided under subsection (3) to the Prime Minister, provide a copy of it to the public office holder who is the subject of the report and make the report available to the public.".

19. *Clause 2, page 25*: Delete lines 4 to 21.

20. *Clause 2, page 25*:

(*a*) Replace line 22 with the following:

"(7) Subject to subsection (8.1), the Commissioner shall provide the"; and

(*b*) Replace lines 26 to 31 with the following:

"request.

(8) Subject to subsection (8.1), the Commissioner shall, at the same time".

21. *Clause 2, page 25*: Replace, in the English version, line 32 with the following:

"that the report is provided under subsection (7),".

22. *Clause 2, page 25*: Add after line 37 the following:

"(8.1) If the Commissioner determines that the request was frivolous or vexatious or was made in bad faith or the examination of the matter was discontinued under subsection (3), the Commissioner shall provide the report only to the member who made the request and the public office holder or former public office holder who is the subject of the request, and shall not make the report available to the public.".

23. *Clause 2, page 26*:

(*a*) Replace lines 15 and 16 with the following:

"**46.** Before providing advice under paragraph 43(1)(*a*) or a report under section 43,";

(*b*) Replace line 22 with the following:

"out in a report under section 43, 44 or 45 that a"; and

(*c*) Replace line 28 with the following:

"**48.** (1) For the purposes of paragraph 43(1)(*a*)".

24. *Clause 2, page 27*: Replace line 17 with the following:

"43, 44 or 45; or".

25. *Clause 2, page 28*: Replace line 16 with the following:

"section 86 of the *Parliament of Canada*".

26. *Clause 2, page 28*: Add after line 26 the following:

"(*c.1*) decisions on exemption applications under section 38 and the accompanying reasons;".

27. *Clause 2, page 28*: Replace line 35 with the following:

"recusal under subsection 25(1) or section 30,".

28. *Clause 2, page 31*:

(*a*) Replace line 38 with the following:

"later than two years after the day on which the"; and

(*b*) Replace line 40 with the following:

"matter of the proceedings and, in any case, not later than five years after the day on which the subject-matter of the proceedings arose.".

29. *Clause 2, page 32*: Replace lines 29 and 30 with the following:

"(2) Nothing in this Act abrogates or".

30. *Clause 2, page 32*:

(*a*) Replace line 35 with the following:

"at any time within but not later than two years"; and

(*b*) Replace line 39 with the following:

"five years after the day on which the subject-".

31. *Clause 2, page 33*: Replace lines 7 and 8 with the following:

"**67.** (1) Within five years after this section comes into force, a comprehensive review".

32. *Clause 3, page 35, line 4*: Replace in the French version with the following:

"**aux conflits d'intérêts et à l'éthique en conformité avec l'article 44 de**".

33. *Clause 3*:

(*a*) *Page 33*:

(i) Replace lines 26 and 27 with the following:

"tion in the office of the Ethics Commissioner", and

(ii) Delete line 40; and

(*b*) *Page 34*:

(i) Replace lines 1 and 2 with the following:

"(3) Every reference to the Ethics Commissioner in any",

(ii) Replace, in the English version, line 4 with the following:

"other document executed by that person is",

(iii) Replace lines 9 and 10 with the following:

"administrative proceeding to which the Ethics Commis-",

(iv) Replace line 17 with the following:

"Ethics Commis-", and

(v) Replace lines 21 to 23 with the following:

"possession or control of the Ethics Commissioner relating to the exercise of his or her powers, duties and".

34. *Clause 4, page 35*: Replace line 34 with the following:

"Commissioner or Senate Ethics Officer".

35. *Clause 5, page 36*:

(*a*) Replace lines 5 and 6 with the following:

"committee or member of either House, the Senate Ethics Officer or the Conflict of Interest and Ethics Commissioner"; and

(*b*) Replace line 8 with the following:

"powers referred to in section 86 of the".

36. *Clause 7, page 36*:

(*a*) Replace line 19 with the following:

"(*c*) with respect to the Senate and the office of the Senate Ethics Officer, the Speaker of";

(*b*) Replace line 24 with the following:

"er of the House of Commons,"; and

(*c*) Replace line 32 with the following:

"Commons, Library of Parliament, office of the Senate Ethics Officer and office".

37. *Clause 10, page 37*:

(*a*) Replace line 14 with the following:

"House of Commons, Library of Parliament, office of the Senate Ethics Officer or"; and

(*b*) Replace line 21 with the following:

"Parliament, office of the Senate Ethics Officer or office of the Conflict of Interest".

38. *Clause 11, page 37*: Replace line 27 with the following:

"of Parliament, office of the Senate Ethics Officer and office of the Conflict of".

39. *Clause 12, page 38*:

(*a*) Replace line 3 with the following:

"Parliament, office of the Senate Ethics Officer or office of the Conflict of Interest";

(*b*) Replace, in the English version, line 8 with the following:

"Commons, Library of Parliament, office of the Senate Ethics Officer or office of the";

(*c*) Replace, in the English version, line 14 with the following:

"ment, office of the Senate Ethics Officer or office of the Conflict of Interest and";

(*d*) Replace, in the English version, line 17 with the following:

"Library of Parliament, office of the Senate Ethics Officer or office of the Conflict";

(*e*) Replace, in the English version, line 22 with the following:

"Parliament, office of the Senate Ethics Officer or office of the Conflict of Interest";

(*f*) Replace line 25 with the following:

"House of Commons, Library of Parliament, office of the Senate Ethics Officer or";

(*g*) Replace, in the English version, line 33 with the following:

"Library of Parliament, office of the Senate Ethics Officer or office of the Conflict of";

(*h*) Replace line 39 with the following:

"House of Commons, Library of Parliament, office of the Senate Ethics Officer or"; and

(*i*) Replace, in the English version, line 44 with the following:

"Commons, Library of Parliament, office of the Senate Ethics Officer or office of the".

40. *Clause 13, page 39*:

(*a*) Replace line 7 with the following:

"Commons, Library of Parliament, office of the Senate Ethics Officer or office";

(*b*) Replace, in the English version, line 20 with the following:

"Parliament, office of the Senate Ethics Officer or office of the Conflict of";

(*c*) Replace, in the English version, line 29 with the following:

"Parliament, office of the Senate Ethics Officer or office of the Conflict of"; and

(*d*) Replace, in the English version, line 41 with the following:

"of Commons, Library of Parliament, office of the Senate Ethics Officer or".

41. *Clause 14, page 40*:

(*a*) Replace line 5 with the following:

"of Parliament, office of the Senate Ethics Officer or office of the Conflict of Interest"; and

(*b*) Replace, in the English version, line 14 with the following:

"Parliament, office of the Senate Ethics Officer or office of the Conflict of Interest".

42. *Clause 15*:

(*a*) *Page 40*:

(i) Replace line 22 with the following:

"of Commons, Library of Parliament, office of the Senate Ethics Officer or office of",

(ii) Replace, in the English version, line 28 with the following:

"Library of Parliament, office of the Senate Ethics Officer or office of the Conflict",

(iii) Replace, in the English version, line 36 with the following:

"Library of Parliament, office of the Senate Ethics Officer or office of the Conflict of", and

(iv) Replace line 41 with the following:

"House of Commons, Library of Parliament, office of the Senate Ethics Officer or"; and

(*b*) *Page 41*:

(i) Replace line 3 with the following:

"Parliament, office of the Senate Ethics Officer or office of the Conflict of Interest", and

(ii) Replace, in the English version, line 9 with the following:

"Library of Parliament, office of the Senate Ethics Officer or office of the Conflict of".

43. *Clause 16, page 41*: Replace line 19 with the following:

"mons, Library of Parliament, office of the Senate Ethics Officer or office of the".

44. *Clause 17, page 41*: Replace line 27 with the following:

"Library of Parliament, office of the Senate Ethics Officer or office of the Conflict of".

45. *Clause 18, page 41*: Replace line 35 with the following:

"House of Commons, Library of Parliament, office of the Senate Ethics Officer or".

46. *Clause 19, page 42*: Replace line 6 with the following:

"of Parliament, office of the Senate Ethics Officer or office of the Conflict of".

47. *Clause 20, page 42*: Replace line 15 with the following:

"(*c.1*) the office of the Senate Ethics Officer and the office of the Conflict of Interest and".

48. *Clause 21, page 43*: Replace line 3 with the following:

"House of Commons, Library of Parliament, office of the Senate Ethics Officer or".

49. *Clause 22, page 43*:

(*a*) Replace line 15 with the following:

"Library of Parliament, office of the Senate Ethics Officer or office of the Conflict of"; and

(*b*) Replace line 21 with the following:

"Commons, Library of Parliament, office of the Senate Ethics Officer or office of".

50. *Clause 23, page 43*: Replace line 36 with the following:

"Library of Parliament, office of the Senate Ethics Officer or office of the Conflict of".

51. *Clause 24, page 44*: Replace line 3 with the following:

"Parliament, office of the Senate Ethics Officer and office of the Conflict of Interest".

52. *Clause 25, page 44*: Replace line 14 with the following:

"Parliament, office of the Senate Ethics Officer or office of the Conflict of Interest".

53. *Clause 26, page 44*: Replace lines 19 to 21 with the following:

"**26. Subsection 20.5(4) of the *Parliament of Canada Act* is replaced by the following:**

(4) For greater certainty, the administration of the *Conflict of Interest Act* in respect of public office holders who are ministers of the Crown, ministers of state or parliamentary secretaries is not part of the duties and functions of the Senate Ethics Officer or the committee.".

54. *Clause 28*:

(*a*) *Page 44*:

(i) Replace line 31 with the following:

"recognized party in the House of", and

(ii) Replace lines 33 and 34 with the following:

"resolution of that House.";

(*b*) *Page 45*: Replace line 19 with the following:

"Council on address of the House of";

(*c*) *Page 46*:

(i) Replace lines 26 and 27 with the following:

"shall be considered by the Speaker of the House of Commons and",

(ii) Replace line 34 with the following:

"sioner referred to in sections 86 and 87; and", and

(iii) Delete lines 39 to 44;

(*d*) *Page 47*:

(i) Delete lines 1 to 23, and

(ii) Replace line 24 with the following:

"**86.** (1) The Commissioner shall perform the"; and

(*e*) *Page 48*:

(i) Add after line 7 the following:

"**86.1** (1) The Commissioner, or any person acting on behalf or under the direction of the Commissioner, is not a competent or compellable witness in respect of any matter coming to his or her knowledge as a result of exercising any powers or performing any duties or functions of the Commissioner under this Act.

(2) No criminal or civil proceedings lie against the Commissioner, or any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith in the exercise or purported exercise of any power, or the performance or purported performance of any duty or function, of the Commissioner under this Act.

(3) The protection provided under subsections (1) and (2) does not limit any powers, privileges, rights and immunities that the Commissioner may otherwise enjoy.",

(ii) Replace line 8 with the following:

"**87.** The Commissioner shall, in relation to",

(iii) Replace line 12 with the following:

"**88.** (1) Personal information collected by the",

(iv) Replace line 23 with the following:

"**89.** The Commissioner may authorize any",

(v) Replace line 30 with the following:

"**90.** (1) Within three months after the end of",

(vi) Delete lines 32 to 35,

(vii) Replace lines 36 and 37 with the following:

"(*a*) a report on his or her activities under section 86 for that year to the Speaker of the", and

(viii) Replace lines 40 and 41 with the following:

"(*b*) a report on his or her activities under section 87 for that year to the Speaker of the".

55. *Clause 28, page 46*: Replace line 29 with the following:

"Board, who shall lay it before the".

56. *Clause 29, page 49*: Replace line 12 with the following:

"Parliament, office of the Senate Ethics Officer and office of the Conflict of".

57. *Clause 30, page 49*: Replace line 17 with the following:

"of Parliament, office of the Senate Ethics Officer or office of the Conflict of".

58. *Clause 31*:

(*a*) *Page 49*: Replace lines 20 to 22 with the following:

"**of the Act is amended by replacing paragraph (*e*) with the**"; and

(*b*) *Page 50*: Replace line 1 with the following:

"(*e*) the office of the Conflict of Interest and".

59. *Clause 32, page 50*: Replace lines 4 to 6 with the following:

"**32. Paragraph 85(*c.2*) of the Act is replaced by the following:**

(*c.2*) the office of the Conflict of Interest and".

60. *Clause 33, page 50*: Replace line 20 with the following:

"Parliament, office of the Senate Ethics Officer and office of the Conflict of Interest".

61. *Clause 34*:

(*a*) *Page 50*: Replace line 31 with the following:

"Parliament, office of the Senate Ethics Officer and office of the Conflict of Interest"; and

(*b*) *Page 51*: Replace line 1 with the following:

"ment, office of the Senate Ethics Officer or office of the Conflict of Interest and".

62. *Clause 35, page 51*: Replace, in the English version, line 20 with the following:

"a person under section 39 affects any obligation or".

63. *Clause 37*:

(*a*) *Page 51*:

(i) Replace lines 36 and 37 with the following:

"**into force and the day on which section 24 of the *Public Servants Disclosure***", and

(ii) Replace line 41 with the following:

"**adding the following after section 67:**"; and

(*b*) *Page 52*: Replace lines 1 and 2 with the following:

"**68.** If a matter is referred to the Commissioner under subsection 24(2.1) of the *Public*".

64. *Clause 38, page 52*:

(*a*) Replace line 25 with the following:

"committee or member of either House, the Senate Ethics Officer or the"; and

(*b*) Replace lines 28 and 29 with the following:

"powers referred to in sections 41.1 to 41.5 and 86 of the *Parliament of Canada Act*.".

65. *Clause 40, page 56*: Replace, in the French version, line 13 with the following:

"*a*) dont il sait ou devrait normalement savoir qu'elle contient des rensei-".

66. *Clause 44, page 58*: Add after line 5 the following:

"**(4) Section 404.2 of the Act is amended by adding the following after subsection (6):**

(7) For greater certainty, the payment by or on behalf of an individual of fees to attend an annual, biennial or leadership convention of a particular registered party is a contribution to that party.".

67. *Clause 46*:

(*a*) *Page 58*:

(i) Replace line 30 with the following:

"(*a*) $2,000 in total in any calendar year to a",

(ii) Replace line 32 with the following:

"(*a.1*) $2,000 in total in any calendar year to",

(iii) Replace line 36 with the following:

"(*b*) $2,000 in total to a candidate for a", and

(iv) Replace line 39 with the following:

"(*c*) $2,000 in total to the leadership contest-"; and

(*b*) *Page 59*:

(i) Replace line 15 with the following:

"(*a*) contributions that do not exceed $2,000",

(ii) Replace line 20 with the following:

"(*b*) contributions that do not exceed $2,000", and

(iii) Replace line 25 with the following:

"(*c*) contributions that do not exceed $2,000".

68. *Clause 46*:

(*a*) *Page 58*: Add after line 40 the following:

"(1.1) In respect of any calendar year in which two or more general elections are held, the limits under paragraphs (1)(*a*) and (*a.1*) are the amounts set out in those paragraphs multiplied by the number of general elections held in that calendar year."; and

(*b*) *Page 59*: Add after line 28 the following:

"**(4) Section 405 of the Act is amended by adding the following after subsection (4):**

(4.1) In respect of any calendar year in which a nomination contestant or candidate of a registered party campaigns as a nomination contestant or candidate in two or more general elections, the contribution amount referred to in paragraph (4)(*a*) is the amount set out in that paragraph multiplied by the number of general elections in which the nomination contestant or candidate campaigned in that calendar year.".

69. *Clause 56*:

(*a*) *Page 63*: Replace line 20 with the following:

"required period) or paragraph 92.6(*b*) (pro-";

(*b*) *Page 64*:

(i) Replace line 5 with the following:

"92.6(*a*) (providing statement containing", and

(ii) Replace line 7 with the following:

"ingly contravenes paragraph 92.6(*b*) (pro-".

70. *Clause 59, page 64*:

(*a*) Replace line 31 with the following:

"later than two years after the day on which the"; and

(*b*) Replace line 34 with the following:

"than seven years after the day on which the offence".

71. *Clause 67, Page 66*:

(*a*) Replace line 13 with the following:

""designated public office holder" means"; and

(*b*) Replace lines 18 and 19 with the following:

"(*b*) any other public office holder who, in a department within the meaning of paragraph (*a*), (*a.1*) or (*d*) of the definition "department" in section 2 of the *Financial Admin*-".

72. *Clause 67, page 67*: Replace line 2 with the following:

"to (4), as if the person were a designated public".

73: *Clause 69, page 69*: Replace line 19 with the following:

"(*g*) the fact that the undertaking does not provide for any".

74. *Clause 69, page 69*: Replace lines 30 to 32 with the following:

"the individual as a designated public office holder and the date on which the individual last ceased to hold such a designated public office;".

75. *Clause 69, page 70*: Replace lines 4 to 6 with the following:

"month involving a designated public office holder and relating to the undertaking,

(i) the name of the designated public office".

76. C*lause 70, page 72*: Replace lines 38 and 39 with the following:

"month involving a designated public office holder,

(i) the name of the designated public office".

77. *Clause 70, page 72*: Replace lines 7 to 9 with the following:

"qualified the employee as a designated public office holder and the date on which the employee last ceased to hold such a designated".

78. *Clause 73, page 74*: Replace line 22 with the following:

"present or former designated public office holder".

79. *Clause 73, page 74*: Replace line 30 with the following:

"(2) The Commissioner shall, in a report under".

80. *Clause 73, page 74*: Replace, in the English version, line 32 with the following:

"present or former designated public office holder to".

81. *Clause 75*, page 75:

(*a*) Replace line 13 with the following:

"individual ceases to be a designated public office"; and

(*b*) Replace line 42 with the following:

"(*a*) was a designated public office holder for a".

82. *Clause 75, page 75*: Replace line 21 with the following:

"that organization if carrying on those activities would constitute a significant part of the individual's work on its behalf; and".

83. *Clause 75*:

(*a*) *Page 75*: Replace, in the English version, line 29 with the following:

"of any designated public office that was held only"; and

(*b*) *Page 76*: Replace, in the English version, line 1 with the following:

"(*b*) was a designated public office holder on an".

84. *Clause 75, page 76*: Add, after line 8, the following:

"**10.111** No individual who has a contract for services with a department or other governmental organization, and no individual who is employed by an organization or corporation that has a contract for services with a department or other governmental organization, shall carry on, in relation to a public office holder who is employed by or serves in that department or governmental organization, for a period of five years after the day on which the contract ends,

(*a*) any of the activities referred to in paragraph 5(1)(*a*) or (*b*) in the circumstances referred to in subsection 5(1); or

(*b*) any of the activities referred to in paragraph 7(1)(*a*) on behalf of an organization or corporation, if carrying on those activities would constitute a significant part of the individual's work on its behalf.".

85. *Clause 75, page 76*: Replace line 10 with the following:

"Act as if they were a designated public office holder".

86. *Clause 79, page 80*: Replace lines 16 to 22 with the following:

"any position occupied by a public office holder as a position occupied by a designated public office holder for the purposes of paragraph (*c*) of the definition "designated public office holder" in subsection 2(1) if, in the opinion of the Governor in Council, doing so is necessary for the purposes of this Act;".

87. *New clause 79.1, page 80*: Add after line 22 the following:

"**79.1 The Act is amended by adding the following after section 13:**

**PROHIBITION**

**13.1** No individual shall obstruct the Commissioner or any person acting on behalf or under the direction of the Commissioner in the performance of the Commissioner's duties and functions under this Act.".

88. *Clause 80, page 81*:

(*a*) Replace line 7 with the following:

"than two years after the day on which the"; and

(*b*) Replace line 10 with the following:

"later than five years after the day on which the".

89. *Clause 80, page 81*:

(*a*) Replace line 12 with the following:

"**14.01** (1) If a person is convicted of an offence"; and

(*b*) Add after line 22 the following:

"(2) Any person who fails to comply with a prohibition of the Commissioner under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding $50,000.".

90. *Clause 88, page 83*: Replace line 35 with the following:

"**designated public office holder with the rank of**".

91. *Delete clause 89*, *pages 85 to 86*.

92. *Clause 99, page 88*: Replace, in the English version, line 25 with the following:

"**41.3** (1) If a trust disclosed by a member of the House of Commons".

93. *Clause 101, page 91*: Replace line 16 with the following:

"House of Commons, Library of Parliament, office of the Senate Ethics Officer or".

94. *Clause 106, page 92*: Replace lines 39 and 40 with the following:

"(*c*) special adviser to a minister.".

95. *Clause 107, page 93*:

(*a*) Replace line 7 with the following:

"**107. (1) A person referred to in subsection**"; and

(*b*) Add after line 16 the following:

"**(2) A person who, on the coming into force of this section, is employed in the circumstances described in subsection 41(2) or (3) of the *Public Service Employment Act*, as it read immediately before the coming into force of subsection 103(1) of this Act, and who would have had priority for appointment in accordance with subsection 41(2) or (3) if the person had ceased to be so employed immediately before the coming into force of subsection 103(1), shall be given priority for appointment in accordance with subsection 41(2) or (3), as the case may be, when they cease to be so employed.**

**(3) For the purposes of subsections (1) and (2), priority for appointment under subsection 41(2) or (3) of the *Public Service Employment Act*, as it read immediately before the coming into force of subsection 103(1) of this Act, shall be determined as if sections 100 and 102 to 105 of this Act had not been enacted.**".

96. *Clause 108, page 93*: Replace, in the English version, line 37 with the following:

"of that province to those provisions.".

97. *Clause 108, page 94*: Replace lines 1 to 4 with the following:

"**(4) Sections 41 to 43, subsections 44(3) and (4) and sections 45 to 55, 57 and 60 to 64 come into force on January 1 of the year following the year in which this Act receives royal assent.**

**(4.1) Sections 63 and 64 do not apply in respect of monetary contributions made before the day on which those sections come into force.**".

98. *Clause 110, page 95*: Replace lines 5 and 6 with the following:

"commission under the Great Seal, appoint an Auditor General of Canada".

99. *Clause 116, page 97*: Replace line 26 with the following:

"(3) The Governor in Council shall select the".

100. *Clause 116, page 97*: Replace line 29 with the following:

"the Leader of the Government in the Senate and the Leader of the Government in the House of".

101. *Clause 116, page 97*: Replace lines 30 and 31 with the following:

"Commons, by a committee composed of the Leader of the Government in the Senate, the Leader of the Opposition in the Senate, the Leader of the Government in the House of Commons, the Leader of the Opposition in the House of Commons, and the Parliamentary Librarian.".

102. *Clause 116, page 97*: Replace line 37 with the following:

"(*a*) provide independent analysis to the Senate".

103. *Clause 116, page 98*:

(*a*) Replace line 3 with the following:

"that committee into the"; and

(*b*) Replace lines 26 to 32 with the following:

"those estimates; and

(*d*) when requested to do so by a member of".

104. *Clause 116*:

(*a*) *Page 98*: Replace, in the English version, line 47 with the following:

"of this section, to free and timely access"; and

(*b*) *Page 99*: Replace, in the French version, line 1 with the following:

"connaissance, gratuitement et en temps opportun, de".

105. *Clause 120, page 102*:

(*a*) Delete lines 22 and 23; and

(*b*) Delete lines 27 to 30.

106. *Clause 121, page 105*: Replace lines 19 and 20 with the following:

"(*a.1*) a person named by the leader in the Senate of each recognized party in that House;

(*b*) a person named by the leader in the House of Commons of each recognized party in that House;".

107. *Clause 121, page 105*: Replace lines 27 to 34 with the following:

"(2) The selection committee shall identify and assess candidates for appointment to the office of Director, each of whom must be a member of at least 10 years' standing at the bar of any province, and the committee shall recommend to the Attorney General three assessed candidates whom it considers suitable for appointment.".

108. *Clause 121*:

(*a*) *Page 105*: Replace lines 41 and 42 with the following:

"to a committee of the Senate, of the House of Commons or of both Houses of Parliament designated or established for that purpose."; and

(*b*) *Page 106*:

(i) Replace line 2 with the following:

"committee referred to in subsection (4) gives its approval,", and

(ii) Replace, in the English version, line 5 with the following:

"or, if the committee does not give".

109. *Clause 121, page 106*: Replace line 13 with the following:

"Senate and House of Commons to that effect. The Director".

110. *Clause 142, page 117*: Replace line 10 with the following:

"applies to any of its wholly-owned subsidiaries within the".

111. *Clause 143, page 117*: Replace line 40 with the following:

"regulations, provide timely access to the record in the".

112. *Clause 144, page 118*:

(*a*) Replace lines 13 and 14 with the following:

"(*c*) the Information Commissioner;

(*d*) the Privacy Commissioner; and

(*e*) the Commissioner of Lobbying."; and

(*b*) Replace line 16 with the following:

"institution referred to in any of paragraphs (1)(*a*) to (*e*)".

113. *Clause 145, page 118*: Replace line 29 with the following:

"*Elections Act*, the Chief Electoral Officer may".

114. *Clause 147, page 119*:

(*a*) Replace lines 24 and 25 with the following:

"Board;

(*d*) VIA Rail Canada Inc.; or

(*e*) the Canada Foundation for Sustainable Development Technology."; and

(*b*) Replace line 32 with the following:

"(*e*); or".

115. *Clause 148, page 120*: Add after line 10 the following:

"**20.3** The head of the Canada Foundation for Sustainable Development Technology shall refuse to disclose a record requested under this Act that contains advice or information obtained in confidence by the Foundation relating to applications for funding, eligible projects or eligible recipients, within the meaning of the *Canada Foundation for Sustainable Development Technology Act*, if the Foundation has consistently treated the advice or information as confidential.".

116. *Clause 148, page 120*: Add before line 11 the following:

"**20.4** The head of the National Arts Centre Corporation shall refuse to disclose a record requested under this Act if the disclosure would reveal the terms of a contract for the services of a performing artist or the identity of a donor who has made a donation in confidence and if the Corporation has consistently treated the information as confidential.".

117. *Clause 150, page 120*: Replace line 37 with the following:

"government institution or any related audit working paper if a final report of the".

118. *New clause 150.1, page 120*: Add after line 41 the following:

"**150.1 The Act is amended by adding the following after section 26:**

**26.1** Despite any other provision of this Act, the head of a government institution may disclose all or part of a record to which this Act applies if the head determines that the public interest in the disclosure clearly outweighs in importance any loss, prejudice or harm that may result from the disclosure. However, the head shall not disclose any information that relates to national security.".

119. *Clause 159, page 123*: Add, in the English version, after line 14 the following:

"**68.3** This Act does not apply to any information that was already under the control of the following Foundations before the coming into force of section 166 of the *Federal Accountability Act*:

(*a*) the Asia-Pacific Foundation of Canada;

(*b*) the Canada Foundation for Innovation;

(*c*) the Canada Foundation for Sustainable Development Technology;

(*d*) the Canada Millennium Scholarship Foundation; and

(*e*) The Pierre Elliott Trudeau Foundation.

**68.4** This Act does not apply to any information that was already under the control of the Office of the Auditor General of Canada before the coming into force of section 167 of the *Federal Accountability Act*.

**68.5** This Act does not apply to any information that was already under the control of the Office of the Chief Electoral Officer before the coming into force of section 168 of the *Federal Accountability Act*.

**68.6** This Act does not apply to any information that was already under the control of the Office of the Commissioner of Official Languages before the coming into force of section 169 of the *Federal Accountability Act*.

**68.7** This Act does not apply to any information that was already under the control of the Office of the Information Commissioner before the coming into force of section 170 of the *Federal Accountability Act*.

**68.8** This Act does not apply to any information that was already under the control of the Office of the Privacy Commissioner before the coming into force of section 171 of the *Federal Accountability Act*.".

120. *Delete clause 165, page 126*.

121. *New clause 172.01, page 127*: Add after line 31 the following:

"**172.01 Schedule II to the Act is amended by adding, in alphabetical order, a reference to**

Canada Elections Act

*Loi électorale du Canada*

**and a corresponding reference to "section 540".**".

122. *Delete clause 172.1, page 127.*

123. *New clause 179.1, page 131*: Add before line 17 the following:

"**179.1 The definition "government institution" in section 2 of the *Library and Archives of Canada Act* is replaced by the following**:

"government institution" has the same meaning as in section 3 of the *Access to Information Act* or in section 3 of the *Privacy Act* or means an institution designated by the Governor in Council.".

124. *Clause 180, page 131*: Replace lines 17 and 18 with the following:

"**180. The Act is amended by adding the following after**".

125. *Clause 182, page 132*: Replace line 32 with the following:

"applies to any of its wholly-owned subsidiaries within the".

126. *Clause 191*:

(*a*) *Page 136*: Add after line 43 the following:

"Asia-Pacific Foundation of Canada

*Fondation Asie-Pacifique du Canada"; and*

(*b*) *Page 137*: Add after line 7 the following:

"The Pierre Elliott Trudeau Foundation

*La Fondation Pierre-Elliott-Trudeau*".

127. *Clause 194, page 137*: Add after line 27 the following:

"**(2.1) Paragraph (*d*) of the definition "protected disclosure" in subsection 2(1) of the Act is replaced by the following:**

(*d*) when lawfully permitted or required to do so.".

128. *Clause 194, page 137*: Add after line 36 the following:

"**(3.1) The definition "reprisal" in subsection 2(1) of the Act is amended by striking out the word "and" at the end of paragraph (*d*) and by replacing paragraph (*e*) with the following:**

(*e*) any other measure that may adversely affect, directly or indirectly, the public servant; and

(*f*) a threat to take any of the measures referred to in any of paragraphs (*a*) to (*e*).".

129. *Clause 194, page 138*: Add after line 12 the following:

"**(4.1) The portion of the definition "public sector" in subsection 2(1) of the Act after paragraph (*c*) is replaced by the following:**

However, subject to sections 52 and 53, "public sector" does not include the Canadian Forces.".

130. *New clause 200.1, page 139*: Add after line 43 the following:

"**200.1 Subsection 16(2) of the Act is repealed.**".

131. *Clause 201, page 140*: Add before line 7 the following:

"**19.01** For the purposes of the provisions of this Act relating to complaints in relation to a reprisal, any administrative or disciplinary measure taken against a public servant within one year after the public servant makes a disclosure concerning a particular matter under any of sections 12 to 14 shall be presumed, in the absence of a preponderance of evidence to the contrary, to be a reprisal.".

132. *Clause 201:*

(*a*) *Page 140*: Replace line 16 with the following:

"one year after the day on which the complainant"; and

(*b*) *Page 141*:

(i) Replace line 1 with the following:

"(*b*) the complaint is filed within one year after", and

(ii) Replace line 13 with the following:

"within one year after the later of".

133. *Clause 201, page 154*: Replace lines 39 and 40 with the following:

"(*f*) compensate the complainant for any".

134. *Clause 203, page 159*: Replace, in the English version, line 7 with the following:

"an investigation;".

135. *Clause 203, page 160*:

(*a*) Replace line 30 with the following:

"constitute a wrongdoing or reprisal is $25,000.";

(*b*) Replace line 39 with the following;

"more than $25,000."; and

(*c*) Replace line 43 with the following:

"and (5) is at the discretion of the Commissioner.".

136. *Clause 207, page 162*: Add after line 29 the following:

"(1.1) Where the Commissioner is of the opinion that it is necessary for the purpose of an investigation to obtain information from outside the public sector, the Commissioner may use his or her powers under subsection (1) to direct that such information be provided.".

137. *New clause 207.1, page 162*: Add after line 29 the following:

"**207.1 Section 34 of the Act is repealed.**".

138. *Clause 221, page 171*: Replace lines 39 and 40 with the following:

"33 of that Act if the information identifies or could reasonably be expected to lead to the identification of a public servant who made a disclosure, or a person who provided information or who cooperated in an investigation, under that Act;

(*b*) obtained by him or her or on his or her behalf in the course of an investigation into a disclosure made under that Act or an investigation commenced under section 33 of that Act, unless he or she is of the opinion that it would be in the public interest to disclose the record;

(*c*) created by him or her or on his or her behalf in the course of an investigation into a disclosure made under that Act, or an investigation commenced under section 33 of that Act, if the investigation is not yet completed; or

(*d*) received by a conciliator in the course of".

139. *Clause 221, page 172*: Replace line 12 with the following:

"under that Act if

(*a*) the information identifies or could reasonably be expected to lead to the identification of a public servant who made a disclosure, or a person who provided information or who cooperated in an investigation, under that Act; or

(*b*) the investigation is not yet completed.".

140. *Clause 223, page 174*: Replace line 15 with the following:

"disclosure under that Act and the information identifies or could reasonably be expected to lead to the identification of a public servant who made a disclosure, or a person who provided information or who cooperated in an investigation, under that Act.".

141. *Clause 224, page 174*: Replace lines 20 to 28 with the following:

"**22.2** (1) Subject to paragraph 22(*d*) of the *Public Servants Disclosure Protection Act*, the Public Sector Integrity Commissioner shall refuse to disclose any personal information requested under subsection 12(1) that was obtained or created by him or her or on his or her behalf in the course of an investigation into a disclosure made under that Act or an investigation commenced under section 33 of that Act if the information identifies or could reasonably be expected to lead to the identification of a public servant who made a disclosure, or a person who provided information or who cooperated in an investigation, under that Act.

(2) Subsection (1) does not apply if the public servant or person who is or could reasonably be identified consents to disclosure of the information.".

142. *Clause 224, page 174*: Replace line 35 with the following:

"disclosure under that Act if the information identifies or could reasonably be expected to lead to the identification of a public servant who made a disclosure, or a person who provided information or who cooperated in an investigation, under that Act, unless the public servant or person who is or could reasonably be identified consents to disclosure of the information.".

143. *Clause 226, page 175*: Replace lines 12 and 13 with the following:

"**section 45 of the *Conflict of Interest Act* comes into**".

144. *Clause 227, page 175*: Replace line 32 with the following:

"**1.1** (1) The Governor in Council shall estab-".

145. *Clause 227, page 176*: Replace line 38 with the following:

"Governor in Council that a person be appointed or reappointed".

146. *Clause 227*:

(*a*) *Page 176*: Replace lines 40 and 41 with the following:

"consult with the leader in the Senate of each recognized party in that House and the leader in the House of Commons of each recognized party in that House. An announce-"; and

(*b*) *Page 177*: Replace lines 2 and 3 with the following:

"each of the Speakers of the two Houses of Parliament for tabling in their respective Houses.".

147. *Clause 227, page 176*: Replace line 32 with the following:

"of public servants and appointees involved in appointment".

148. *Clause 227, page 177*: Replace line 5 with the following:

"during good behaviour for a term of seven years".

149. *Clause 228, page 177*: Replace line 28 with the following:

"**sections 183, 184, 186 to 193 and 227 of this Act**".

150. *New clauses 244.1 and 244.2, page 181*: Add after line 30 the following:

**CANADIAN TOURISM COMMISSION ACT**

"**244.1 Subsection 11(4) of the *Canadian Tourism Commission Act* is replaced by the following:**

(4) The directors appointed under subsection (1) hold office during pleasure on a part-time basis for a term not exceeding four years.

**244.2 Subsection 12(3) of the Act is replaced by the following**:

(3) The directors appointed under subsection (1) hold office during pleasure on a part-time basis for a term not exceeding four years.".

151. *Clause 259, page 187*: Add after line 12 the following:

"**16.21**(1) A person who does not occupy a position in the federal public administration but who meets the qualifications established by directive of the Treasury Board may be appointed to an audit committee by the Governor in Council on the recommendation of the President of the Treasury Board.

(2) A member of an audit committee so appointed holds office during pleasure for a term not exceeding four years, which may be renewed for a second term.

(3) A member of an audit committee so appointed shall be paid the remuneration and expenses fixed by the Governor in Council.".

152. *Clause 306, page 203*: Replace line 4 with the following:

"**22.1** (1) The Governor in Council shall".

153. *Clause 306, page 204*: Replace line 22 with the following:

"(4) The Procurement Auditor may re-".

154. *Clause 306, pages 203 and 204*: Replace the expression "Procurement Auditor" with the expression "Procurement Ombudsman" wherever it occurs, with such modifications as the circumstances require.

155. *Clause 307, page 204*: Replace lines 41 to 43 with the following:

"in subsection 22.1(3);".

156. *Clause 307*:

(*a*) *Page 204*: Replace line 40 with the following:

"tions of the Procurement Ombudsman referred to"; and

(*b*) *Page 205*: Replace line 7 with the following:

"Procurement Ombudsman may make in response".

Your Committee has also made certain observations, which are appended to this report.

Respectfully submitted,

DONALD H. OLIVER
*Chair*

**The Hon. the Speaker** *pro tempore***:** When shall this report be taken into consideration?

**Senator Stratton:** Honourable senators, I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

After that is done, I will ask for leave to implement an instruction that the chair received from the committee.

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

**Hon. Senators:** Agreed.

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

**The Hon. the Speaker** *pro tempore***:** Is leave granted for Senator Stratton to read the instruction that the chairman received from the committee?

**Hon. Senators:** Agreed.

**Senator Stratton:** The committee has instructed the chair to ask that the observations of the report be printed as an appendix to the debates of this day. I therefore ask for leave that this be done.

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

**Hon. Senators:** Agreed.

(*For text of observations, see Appendix, p. 989*.)

The Senate adjourned until Monday, October 30, 2006, at 6 p.m.

## APPENDIX

### Observations to the Fourth Report of the Standing Senate Committee on Legal and Constitutional Affairs

### I. Introduction

Throughout the course of Parliamentary history and regardless of the political stripe of the government in power, your committees have at times found that the claims of a government concerning a particular legislative initiative are not faithfully mirrored in the testimony of the witnesses called on to speak to the merits of the bill. This unfortunately has occurred once again with Bill C-2. The disconnect between claims and reality has been exacerbated in this case by the government's decision to emphasize form over substance in its determination to immediately table this extraordinarily complex and far reaching omnibus legislation as its very first legislative act upon assuming office.

When purely political imperatives are allowed to triumph over sound principles of governance, the public good is not well served.

Though we were advised by Minister Baird that the bill had come to the Senate only after having been "examined with a microscope" by his colleagues in the House of Commons, and "by a team of government lawyers...and constitutional experts," (3:11) we were subsequently told by the government to reconsider immediate passage of the bill as we had received it because it had 42 second thoughts, or amendments, that it needed to have made to the centerpiece of its legislative program. Apart from those amendments, there were another half dozen obvious drafting errors which escaped the attention of the microscope in the other place, but fortunately not of your Law Clerk.

Our examination of Bill C-2 also included testimony, where we heard from over 150 witnesses in 30 days of hearings. This process uncovered more than technical and drafting errors. Though we were told that the goal of the legislation is to bring greater transparency and overall accountability to government operations, witnesses testified that the effect of some of the proposed amendments to the existing law would have the perverse effect of achieving the opposite result. In fact, though the government claims that Bill C-2 is grounded in and follows the recommendations proposed by Justice John H. Gomery in his report, Professor Denis Saint-Martin of the University of Montreal testified that "the two are totally in opposite directions; in terms of recommending what needs to be fixed, the two approaches are totally different" (7:30).

In this report we wish to highlight some of the evidence that we heard as well as to draw specific attention to some of the more important amendments that need to be made if the Accountability Bill is to more closely live up to its name. Unfortunately this report is unable to provide full commentary on all of our proposed amendments. Nor is it able to document all the concerns brought forward by witnesses. This abbreviated report is a direct result of the government's insistence that Bill C-2 be put into force with haste. Under the circumstances, it is not possible to provide a comprehensive report on the full implications of a 214 page legislative proposal which amends over 40 existing statutes.

David Hutton, Coordinator of the Federal Accountability Initiative for Reform (FAIR) described the drafting process that was employed to craft Bill C-2 as "deeply flawed," and complained that the bill "is complex and is full of loopholes when you dig into it. I feel that the committees have been given an impossible task, namely trying to turn this into effective legislation that meets intent" (9:98). We could not agree more.

Although it is disappointing that the government has resorted to such a flawed process to craft this legislative response to the calls for greater accountability, that fact only reinforces the importance of the task we were assigned by the Senate. This report on Bill C-2 is another example of why Parliament relies on a "chamber of sober second thought" to review the sometimes unintended consequences of legislation and let the intercession of time and reflection play its role in helping attain good order and government for all Canadians.

### II. Conflict of Interest and Ethics Commissioner

The first part of Bill C-2 covers conflict of interest and ethics issues for Parliamentarians and senior government officials, known as public office holders, who are appointed to their positions by the government through an Order of Cabinet (Governor in Council appointments). The bill proposes a stand-alone statute, namely the Conflict of Interest Act (CIA). This new Act would set out the duties, powers and responsibilities of the new Conflict of Interest and Ethics Commissioner in so far as Ministers, their staff and public office holders are concerned. The CIA would include a code of conduct these individuals would be required to follow.

Part I of Bill C-2 also makes amendments to the Parliament of Canada Act, which is the statute that establishes the appointment process for the current Ethics Commissioner, as well as the Senate Ethics Officer. Bill C-2 would eliminate both the Commissioner for the House of Commons and the Senate Ethics Officer positions and transfer their responsibilities to the new Conflict of Interest and Ethics Commissioner. Unlike the Code of Conduct for Public Office Holders, the codes of conduct for the members of the two Chambers will not be placed in the legislation, but rather will remain within the ambit of the Standing Orders and of the Rules of the respective Houses of Parliament.

The major change proposed in Part I of Bill C-2 is therefore the merging of the two current ethics positions into one, so that the new Conflict of Interest and Ethics Commissioner will have jurisdiction over all Members of the House of Commons, Senators and public office holders.

Your committee heard no convincing evidence to support this move to decrease the number of ethics officers from two to one, particularly when the government has stressed its commitment to strengthen the current regime. Your committee is far from convinced that placing into the hands of a single Commissioner the responsibility of overseeing three codes, of overseeing all members of the Senate and of the House of Commons, as well as thousands of public office holders, and then making him or her accountable to three separate and constitutionally independent authorities, i.e. the Executive, the House of Commons and the Senate, will enhance the existing system. The evidence we heard

does not support this proposal, either as a matter of parliamentary practice and privilege, the constitutional separation of powers, or even common sense. In fact, the evidence would favour three separate officers, giving each a separate and distinct area of responsibility. Nevertheless, if the House of Commons is comfortable with giving a single Ethics Commissioner responsibility for the oversight of their activities as well as oversight of the activities of individuals responsible to the Executive (Ministers and Order in Council Appointments), that is its prerogative. The Senate, however, has long taken the position that the separation of powers contained in our constitution clearly envisages the House of Commons and the Senate as separate and independent chambers. That independence needs to be reflected in the independence of those who support its functions, including a clearly independent and separate Senate Ethics Officer. Nothing in the evidence we heard has persuaded your committee that the Senate should reverse its long held and often expressed position. In fact, the evidence has made it clear that the current arrangement is working and working well. There was absolutely no testimony of any problem or difficulty with the existing system that would require change. In fact, the most persuasive testimony was that which warned about the negative consequences of what is being proposed in this respect.

Your committee does not believe it is necessary to enter into a lengthy discourse on the merits and advantages of a separate and independent Senate Ethics Officer in view of the lengthy debate that has already taken place over the years. One needs only examine the most recent proceedings around Bill C-4 in 2004 and Bill C-34 in 2003, where the merits and conclusions concerning an independent Senate Ethics Officer were strongly put by members on both sides of the Chamber. Consequently, your committee recommends that Bill C-2 be amended to keep in place the existing system in so far as the Senate Ethics Officer is concerned.

Unfortunately, Part I of Bill C-2 also makes several questionable proposals with respect to the duties and responsibilities of the new Commissioner in his or her dealings with public office holders that cause concern.

Many witnesses, led by the current Ethics Commissioner Bernard Shapiro and the former Ethics Counsellor Howard Wilson, believed it very important to include a preamble in the new Conflict of Interest Act, clearly setting out the guiding principles to be followed by public office holders in the performance of their duties. Such a preamble is in the current Prime Minister's Code for Public Office Holders, and has been in every Prime Minister's Code going back to the Right Honourable Brian Mulroney. We are unclear why, for the first time in 20 years, this practice will no longer be followed. *We urge the government to draft such a statement of guiding principles for public office holders and to add it as a preamble to the new Conflict of Interest Act.*

We are also very puzzled about why the definition of "conflict of interest" has been narrowed significantly by removing the words "apparent and potential", words that have found an important place in the codes that all Prime Ministers have put into place for their ministers and for their senior public office holders. Justice not only needs to be done, it also needs to be seen to be done, and this is nowhere more true than in the political environment. Consequently, your committee is amending Bill C-2 be to ensure that the definition of conflict of interest includes apparent and potential conflict of interest.

In this same vein where appearances can be very important, your committee has concerns about section 44 of the proposed new Conflict of Interest Act. This section provides that a member of either Chamber of Parliament who has reasonable grounds to believe that a public office holder has contravened the Act may ask the Commissioner to examine the matter. The difficulty with the provision is that even if the Commissioner quickly concludes the request "was frivolous or vexatious or was made in bad faith" and discontinues the investigation, he/she must nevertheless produce a report, give it to the public office holder in question and to the complaining member of Parliament, as well as to the prime minister and then "make the report available to the public."

Your committee finds it difficult to understand why an accusation that was made privately and in bad faith, and then found to be without any merit whatsoever, needs to be repeated publicly by the Commissioner, thereby impugning the reputation of the blameless public office holder by raising an issue publicly that should never have been raised at all in the first place. Your committee recommends that under the circumstances described, the Report of the Commissioner would be provided to only the member who complained and to the public office holder complained of. The public office holder would then have the option, as the innocent party, of deciding whether it was necessary to publicly release the report of the Commissioner exonerating him/her from the scurrilous accusation. The potential for mischief in section 44 is compounded because it is worded to specifically apply to former office holders, thereby opening the door for members of one Parliament to launch "frivolous or vexatious... bad faith" complaints to the Commissioner about the public office holders associated with earlier Parliaments and administrations.

This naturally leads to the question about how far back in time one can go to complain about the behaviour of former public office holders. Though this question was not specifically addressed in the testimony we heard, section 65 of the proposed new Conflict of Interest Act states:

> Proceedings under this Act may be taken at any time within but not later than five years after the day on which the Commissioner became aware of the subject-matter of the proceedings and, in any case, not later than ten years after the day on which the subject-matter of the proceeding arose.

Your committee has serious misgivings about a proposal whereby the Commissioner could wait up to five years after learning of a matter before instituting a proceeding, or in other words, before taking a prescribed action under the Act. Surely the Commissioner should be required to act more quickly after first learning of a problem. Similarly, being able to initiate actions for as long as 10 years in total following the event in question provides an inordinate length of time to pursue a matter, particularly when as we heard from former Chief Justice Antonio Lamer that the limitation period in Canada for summary conviction offences is normally only 6 months, according to the Criminal Code.

The proposed 5 year/10 year limitation period contained in section 65 of the new Conflict of Interest Act is repeated in the sections of Bill C-2 which amend the Canada Elections Act and the Lobbyists Registration Act. In all cases, your committee believes that those responsible for ensuring the enforcement of

these statutes should be expected to take the appropriate action within two years of learning of the difficulty, and certainly within seven years of the incident taking place. Justice should not be delayed.

Another provision in the proposed Conflict of Interest Act that causes your committee difficulty is section 43, which provides that the Prime Minister may obtain confidential advice from the Commissioner about the application of the new Act to individual public office holders. In normal circumstances this should not be a problem, but in a case where the Commissioner decides to conduct a full investigation into the conduct of a public office holder because of the serious nature of what the Prime Minister is requesting to know, any conclusion the Commissioner then reached and conveyed to the Prime Minister under section 43 would be kept secret. Even if the conclusion reached by the Commissioner was that serious wrong doing had taken place, the only person who would ever know under the Accountability Bill would be the Prime Minster.

While we agree that a Prime Minster should be able to seek and receive confidential advice from the Commissioner, we do not agree that in the circumstances described above the Prime Minister should be able to keep the information received from the Commissioner secret.

Your committee therefore has amended Bill C-2 so that where the Prime Minister requests confidential advice under section 43 and the Commissioner concludes, after conducting an investigation, that a breach of the Act has occurred, that conclusion must be publicly disclosed.

Your committee was surprised that in addition to seeking to keep all dealings with the Commissioner secret, the Prime Minister would be seeking to impose what amounts to a gag order on Members of Parliament concerning possible wrong doing by public office holders, which of course include his or her ministers. Sub sections 44(4) and (5) of the new CIA state that when a member of the Senate or House of Commons receives information "from the public... indicating that a public office holder or former public office holder has contravened this Act," the member, "while considering whether to bring that information to the attention of the Commissioner, shall not disclose that information to anyone." It would be a breach of the Act if the member sought advice from anyone whatsoever about what to do with this information, even advice from his Parliamentary colleagues or party leader. Furthermore, if the member then decided to bring the information to the attention of the Commissioner, subsection 44(5) goes on to say that "the member shall not disclose that information to anyone until the Commissioner has issued a report". There is no requirement that the Commissioner issue a report within a certain period of time.

This prohibition, or gag order, applies only to the Parliamentarians who receive the information from the public and not to anyone in the public itself.

Your committee finds this attempt by the "New Government of Canada" to muzzle Members of Parliament in order to prevent them from discussing with anyone information received from ordinary Canadians about possible wrongdoing by Members of Cabinet and other senior public office holders to be offensive in the extreme. Although we are hesitant about making recommendations that touch on the rights and privileges of the members of the House of Commons and recognize that its members approved this restriction on their actions, your committee nevertheless believes that this prohibition offends the historic and essential privileges of all parliamentarians and must be removed.

**III. Political Financing**

The proposed changes to political financing contained in Bill C-2 were described by Minister Baird as building on major reforms that were put into place in 2003 in Bill C-24 by the former Chrétien Government (S.C. 2003, c.19). "[T]he measures adopted by the Thirty-seventh Parliament were good, and we are proposing to go farther" (3:50).

Your committee, however, is puzzled that the government would initiate these further changes without awaiting the results of the statutory review mandated by C-24. Bill C-24 was the most significant reform of political financing since the *Election Expenses Act* of 1974 and consequently contained a clause that called for a House of Commons Committee to conduct a review "to consider the effects of the provisions of this Act concerning political financing." According to s.63.1 of Bill C-24, that review would take place after the Chief Electoral Officer submitted his report to the House of Commons following the first general election held under the new financing rules. The first part of that report was tabled by Mr. Kingsley in September of 2005. He has said that he will present a second report that would deal with political financing reforms. However, instead of now awaiting Mr. Kingsley's report on political financing and having a review of those new financing laws by a House of Commons committee, as required in Bill C-24, the government has decided to bring forward major new changes to those same financing laws in this bill, without any review whatsoever. To now proceed with further significant changes without having the benefit of that review does not appear to be the most rational way of dealing with such a critical element of our democratic electoral process.

Your committee was even more surprised when after being asked whether the government had done any comparative studies on how other jurisdictions treat political donations, Minister Baird replied: "We did not do a provincial comparison." (3:26). Mr. Leslie Seidle, the former Senior Research Director at Elections Canada, and now with the Institute for Research on Public Policy expressed the view that "If no comparisons were done with provincial experience, I wonder what has happened to our policy development within the Government of Canada" (7:122).

Perhaps the reason that a formal provincial comparison was not undertaken was because the government already knew that the contribution limits it was proposing in Bill C-2 federally were not in line with what now exists provincially.

Currently, at the federal level, individuals are permitted contribute a maximum of:

1. $5,000 to a registered political party and its constituency association collectively in a calendar year

2. $5,000 to a non-registered party candidate in a particular election; and

3. $5,000 to leadership contestants in a particular leadership contest

Unions and corporations are allowed to contribute a maximum of $1,000 in any calendar year to local constituencies and candidates collectively.

Bill C-2 would prohibit all union and corporate donations and would significantly reduce the amounts individuals are able to contribute to political parties and their candidates. Instead of the current $5,000 limit, Canadians would be able to contribute a maximum of $1,000 to leadership hopefuls as well as to candidates of unregistered parties. The current maximum of $5,000 for registered parties, their candidates and constituencies would be reduced to $2,000, to be equally divided between the party itself and between the local constituencies together with its candidate.

All theses limits are well below what is permitted in virtually all provinces. In fact, several provinces have absolutely no contribution limits for political donations as can be seen from a comparative analysis conducted by the Library of Parliament which is attached as an appendix to this report. For those provinces that do have contribution restrictions, their limits are normally much higher than what is proposed in Bill C-2.

The limits in Alberta, for instance, for individuals wishing to contribute to the electoral process within their province during a provincial election would be up to 30 times higher than the limit of Canadians wishing to support the political party they thought could best represent their interest during a federal election. It is difficult to justify a measure producing such disparity, particularly when a scheduled federal review of the political financing system is cancelled in order to bring about this result.

Witnesses before your committee, especially representatives of smaller political parties, were concerned that the reduced political contribution limits would severely impair their ability to raise needed campaign funds. Some of the smaller political parties, in particular, noted that they are dependent upon relatively large contributions from a small number of contributors.

Will Arlow, of the Canadian Action Party, described the new limits as "punishing" and "as hostile to small parties" (6:60). Marvin Glass of the Communist Party of Canada opined that "The main point here is that this makes small parties a self-fulfilling prophecy. The proposals you make are almost guaranteed to keep us small" (6:87).

The government has failed to produce any evidence whatsoever that the existing limits are somehow undermining the electoral process at either the federal or the provincial level, where contribution limits are generally higher than those being proposed in Bill C-2. This failure of the government to support its proposals on electoral financing with any empirical evidence raises concerns about the true consequences of these major changes. Mr. Arthur Kroeger, chair of the Canadian Policy Research Networks and a former Deputy Minister in five federal government departments, told us:

> What problem are we trying to solve? Were there abuses when the level was $5,400? I do not know. I do not remember reading of any such abuses. Were there abuses that merit the reduced levels of contributions that were permitted by business and unions? If you cannot identify the problem that justifies a provision in the bill, then have you lost balance and have you pushed things too far? Those are questions in my mind...Do we truly need to go that far to achieve good governance and are we risking harm? It is possible (3:107).

The reason for this concern is the important role political donations play in our democratic electoral system, and the importance of ensuring a balanced approach where adherents of all political parties can participate equally. The motivation behind measures to enhance the accountability of government and improve the electoral process should not be motivated by partisan political considerations, as was suggested by a number of our witnesses.

Professor Leslie A. Pal of Carleton University testified:

> For me, as a matter of democratic practice, one of the most fundamental aspects of democracy is for people to be able to support political parties and other representatives of their political interests...The political party in power has a better capacity to raise individual donations as compared with its competitors. Speaking frankly, the introduction of these limits plays well politically. It also plays well strategically to the capacities of the current government (4:12).

Your committee believes that reductions proposed in this legislation need to be ameliorated, particularly after hearing the virtually unanimous testimony from the representatives of the smaller political parties about the serious harm these limits would do to their ability to participate in the political process. Consequently, the contribution limits to leadership contestants and to candidates of unregistered parties should be decreased to $2,000 instead of to $1,000 as proposed in Bill C-2. Likewise, the contributions limit for registered political parties should be $2,000, as well as for local constituencies and their candidates. Furthermore, to clarify the problem some parties are having in determining whether to include their convention fees as political contributions, the $2,000 limit for registered political parties should explicitly state, for greater certainty, that this limit does indeed include convention fees, as has been intimated by Mr. Jean Pierre Kingsley, Canada's Chief Electoral Officer.

This bill proposes to eliminate in its entirety the already modest amounts unions and corporations may donate at the local constituency level. *Your committee recommends that the government reconsider this ban, particularly in view of the evidence presented by the smaller parties who it appears may be inordinately affected.* In addition, Pierre F. Côté, for almost 20 years, the former Chief Electoral Officer of Quebec expressed his opinion that in mirroring the corporate and union bans that were instituted in his province in 1977, this legislation "seems to want to repeat the same mistakes" (6:114) Finally, questions were raised by our witnesses about the constitutionality of this provision, including by Professor Errol P. Mendes, of the Faculty of Law at the University of Ottawa who feared that they offended our Charter of Rights and Freedoms. *In light of what we heard, your committee believes that this total ban on union and corporate contributions needs to be carefully re-examined in a larger review that the government should initiate into political financing, as was provided for in Bill C-24.*

As a final note on this issue, your committee is surprised that a government, whose party was able to grow from very modest beginnings to its current position of strength by taking full advantage of the existing party financing laws would now, upon

attaining power, propose to change those same laws to the clear detriment of today's smaller parties. Some of these smaller parties are today attempting to spark public movements much as the early Reform Party adherents did years ago. One would have thought that those individuals in Canada's New Government who trace their heritage back to the early days of the Reform Party would have some empathy for those now struggling with the same challenges they faced and would not intentionally add to their already considerable burdens.

**IV. Lobbying**

Bill C-2 would impose numerous and onerous new filing obligations on individuals, corporations and organizations that lobby the federal government. It would also impose a 5-year ban on former ministers, ministerial staff and certain senior public servants from engaging in lobbying activities.

Your Committee heard testimony from witnesses across the political spectrum. The common refrain was that the 5-year ban is excessive, unwarranted and will have the effect of depriving the government of the services of capable, qualified Canadians who will not wish to face such a ban after they leave public service. Notably, none of the witnesses would themselves be affected by this policy. In fact, the bill is in their self-interest because the effect of the changes would be to reduce future competition.

We share the strong reservations of these witnesses about the wisdom of this policy choice. However, we also recognize that this is a policy that was an important plank of the Government's platform in the recent election. Accordingly, we do not propose any amendment to this 5-year ban. However, we urge the Government to monitor the impact of this policy, both on former public servants and on the Government's continued ability to attract highly qualified individuals to government service.

The last set of major amendments to the current law, the *Lobbyists Registration Act*, have been in force only since 2003. Parliament had not yet even reached the time for the planned 5-year review of that Act, before the current Government proposed to change it with Bill C-2. Your Committee heard repeatedly that the real problems do not arise from defects with the law as it currently exists, but from those individuals and organizations that do not comply with the law — the unregistered lobbyists.

We regret that Bill C-2 does not address this problem. Your Committee tried to hear from advocacy groups that are not registered lobbyists under the current Act. We invited the National Citizens Coalition to appear before us. We wanted to better understand why large organizations such as the National Citizens Coalition whose relentless advocacy initiatives would be seen as lobbying by most Canadians are not registered as lobbyists under the Act. Their testimony could have assisted us in assessing how best to approach the problem that had been repeatedly identified to us by witnesses. To our disappointment, they declined our invitation to appear and would not publicly testify.

We urge the Government to consider this problem of unregistered lobbyists which was also identified by Mr. Justice Gomery as an issue of concern. For example, we note that while the Act is being renamed "the *Lobbying Act*", andthe new agent of Parliament created under the Act is named "the Commissioner of Lobbying," and "lobbyists" and "lobbying" are used repeatedly in headings and marginal notes throughout the proposed Act, nevertheless the terms "lobbying" and "lobbyist" are not defined anywhere in the legislation. We recognize the difficulties in defining these terms, but wonder if this absence is a loophole that enables individuals and organizations to avoid registration while advocating for causes in a manner that most Canadians would see as lobbying under the common sense meaning of the word.

Your Committee believes that true transparency requires that the public have the ability to know which individuals, corporations and organizations have and use access to Government for professional reasons; for reasons that extend beyond their own narrow, individual, self-interests. **We urge the Government to consider defining the terms, and ensure that the Act is respected and complied with by all appropriate advocacy groups that lobby the government.**

Witnesses before your Committee also identified the problem of firms that enter into contracts with particular government departments to provide policy assistance, and who then lobby those same officials on behalf of private clients. As a witness who spoke to us on this point said, "You can play around with the language of firewalls all you want, but anything short of a complete prohibition would simply be chasing your tail." (11:68) We were disappointed to see that nothing in Bill C-2 even attempts to address this problem. Your Committee is proposing an amendment that would prohibit this activity.

Your Committee is in the difficult situation of being asked to pass a bill where critical details will be set out in regulations, yet no one who appeared before us was in a position to tell us what these regulations will provide. The Government's urgency in having Parliament pass Bill C-2 has not been reflected in its treatment of the necessary regulations, which may not be available until June 2007. As Mr. Alain Pineau, National Director of the Canadian Conference of the Arts, told us:

> A briefing session was organized under the leadership of Mr. Perrin Beatty of the Canadian Manufacturers and Exporters. There were about 15 people in the room. It was made clear to us that the legislation had been put together at incredible speed, that it was extremely complex and that they could not answer many of the questions addressed to them. They kept saying, "Well, you will see that in the regulations, and according to the timetable under which we are working now, you will know in detail what you will have to report probably by June 2007. (11:45)

We also heard extensive testimony about the anticipated burden of the new reporting requirements that would be imposed under this bill on everyone who has dealings with the government. We are concerned that individuals and organizations with the greatest knowledge of particular issues, who historically have been happy to share their knowledge and expertise with government officials charged with developing public policy in a particular area, will now be reluctant to engage in the public policy-making process because of this new regulatory minefield.

Policy-makers may find themselves hearing the views only of those organizations that have the resources to be able to file the reports required under the law. Businesses with pockets deep enough to afford their own full-time lobbyists, whether in-house

or not, who are equipped to make the required filings, may not accurately represent the full spectrum of issues and policy options. Canadian public policy development will not be well served if they come to hold even more sway in government circles, as some of our witnesses feared they would under this legislation.

A related concern is the impact these reporting requirements will have on not-for-profit organizations, many of which already struggle to do their work with limited resources. We agree that it is important to see, through the registration and filing process, who is being given access to our decision-makers, and how much access they are able to obtain from decision-makers. However *we are concerned that this bill, which claims to be about openness and transparency, in fact will limit dissenting voices and keep Canadians — except those wealthy individuals, corporations and organizations that can bear the cost of complying with the law (or choose to interpret the law as not applying to them) — away from the very government which is there to serve them.*

Another frequently heard concern was that the reporting obligations will not adequately protect commercially sensitive and confidential information, giving competitors an unfair advantage. We believe that this is an issue that, together with others, can be addressed in carefully drafted regulations. We note, however, the lack of consultation that preceded the tabling of Bill C-2. This must not be repeated during the drafting of the regulations. The Government has an obligation to consult with those who will be directly affected by this law, to ensure that the goals of accountability and transparency are attained without damaging their legitimate interests.

Your Committee has three final comments with respect to the new 5-year ban on lobbying for former senior public office holders. We were surprised to see that Bill C-2 would have made it significantly more difficult for former senior public office holders to join organizations such as not-for-profit organizations, than to leave office and join corporations. As drafted, the 5-year ban distinguishes between the two. Guy Giorno, former Chief of Staff and Counsel to then-Premier of Ontario Mike Harris, described the problem in the bill as follows: "A senior public office holder who goes to a not-for-profit or a partnership and spends 1 per cent of his time lobbying would be covered [by the ban], whereas one who goes to work for a corporation and spends 19.999 per cent of his time lobbying would not be covered." (11:37) This is wrong. Like Mr. Giorno, we believe this was not intentional, but rather another example of the too-hasty drafting of Bill C-2. We propose amending this provision, to apply the same standard to organizations that would be applied to corporations.

We were concerned to see possible inconsistencies between the lobbying prohibitions set out in the new *Lobbying Act* and those contained in the post-employment provisions of the new *Conflict of Interest Act*. We suspect this overlap and possible inconsistency is also the result of the exceptionally short time frame in which this lengthy, complex bill was drafted and examined in the other place. We are advised that the provisions of the two Acts on this issue are cumulative, and should not, as we fear, result in "forum-shopping" for the best result from either the Conflict of Interest and Ethics Commissioner and Commissioner of Lobbying, each of whom has authority to grant exemptions to the lobbying prohibitions under his or her own Act. We expect the Government to monitor this closely.

Finally, we wonder why former members of the Senate and House of Commons are not included in the 5-year lobbying ban. As a witness asked rhetorically, "You are trying to tell me that a 20-year old staffer who is keeping a minister's schedule is banking political currency at a rate that exceeds that of a backbencher?" (11:77) We agree. We are not convinced, as stated above, that the 5-year ban is the right policy choice. But if it is determined that it is sensible and necessary, and has not had the effect of deterring Canadians from public service, then we propose that consideration be given to extending it to former members of the Senate and House of Commons, as well.

**V. Access to Information Act and Privacy Act**

> **Senator Stratton:** What I want is a general agreement or concurrence with what is the intent of what we are doing here with this bill.
>
> **Alan Leadbeater, Deputy Information Commissioner:** ...No, I do not agree with your general premise that this will increase accountability. This is smoke and mirrors. (8:26)

It is probably fair to say that the most difficult parts of Bill C-2, both to properly understand and then to attempt to fix, are the amendments to the *Access to Information* and *Privacy Acts*. The Conservative Party, made much of its intent to "force the government to open its windows" during the recent election campaign. However, it became patently clear to your Committee during the weeks of testimony on Bill C-2, that immediately upon assuming power, "Canada's New Government" did its best to slam all windows and doors shut.

The amendments to the *Access to Information Act* seem drafted to confound and mystify, with provisions scattered throughout the 214-page bill. Exceptions are grafted upon exceptions, and there is strangely divergent treatment of apparently similar information, depending where it is held in the government. The bottom line, though, is clear: instead of legislating openness and transparency, this Conservative Government is attempting to legislate shadows and secrecy. In many cases, information was to be kept secret forever — protection greater than that afforded Cabinet documents, and one designed to facilitate unprecedented control over the Canadian public's right to know about the actions of its government. The provisions would extend to future generations of Canadians, and rob them of their ability to discover their history.

Trying to bring coherence to this complex web of amendments was probably the most difficult task before your Committee. In brief, our amendments do the following:

Your Committee would amend s. 4(2.1) of the *Access to Information Act* to include an obligation for the heads of government institutions to respond to access requests on a timely basis. This responds to testimony heard about the length of time it frequently takes the government to respond to requests. The Canadian public is not well served when requests for information are not answered until a year — and in at least one case, two years — after they are made.

We also introduced a general "public interest override" clause, that will authorize the disclosure of information where it is clearly in the public interest to do so. Your Committee heard a number

of witnesses who spoke of the value of such a provision. It has worked well in a number of provincial access to information statutes. We believe it is an important statement of principle and a critical addition to the bill.

We heard a great deal of evidence about the differing treatment under Bill C-2 of the various Officers or Agents of Parliament. The Bill would have opened up the records of some, while burying records of others indefinitely. Your Committee believes that this is wrong. Our amendments seek to treat all Officers and Agents of Parliament the same. They will open access to records created by or on behalf of the various officers and agents of Parliament in the course of investigations and audits once the investigation or audit and all related proceedings are concluded. This includes access to draft audits and working papers, including those of the Auditor General.

We appreciate the concerns expressed by the Auditor General about the risks of opening a draft to public scrutiny. We are confident that these risks can be managed. Most importantly, experience has demonstrated the value of public access to such documents. Accordingly, we have concluded that the draft audits and working papers should be accessible after the audit and all related proceedings have been completed.

We also introduced amendments to similarly open up draft documents and working papers related to internal audits. These kinds of records have proven indispensable in the past. Canadians should have access to them once the audit has been completed.

As noted above, your Committee was surprised to see that different officers or agents of Parliament were treated differently under Bill C-2. Under our amendments, this will change. The exceptions carved out by Bill C-2 for the Auditor General and the Commissioner of Official Languages will no longer apply, and our amendments would bring the Commissioner of Lobbying within the same regime.

Your Committee struggled with the appropriate level of access should be provided with respect to the work of the new Public Sector Integrity Commissioner. We noted the representations from whistleblowers themselves and from the current Public Service Integrity Officer, telling us that Bill C-2 provided excessive secrecy and would prevent Canadians learning about wrongdoings in government. At the same time, we were concerned to ensure that public servants would be assured of the necessary protection throughout the process. Our amendments follow the approach proposed by Dr. Keyserlingk, the current Public Service Integrity Officer, and seeks to strike the right balance between these competing concerns.

One aspect of Bill C-2 that was generally regarded as an advance was the decision to bring Crown corporations and foundations within the umbrella of the *Access to Information Act*. However, your Committee was however concerned to discover the almost haphazard way in which certain organizations were brought within the scope of the Act, while others were excluded. Certain protections were afforded some entities but denied to others engaged in the same activities and sometimes dealing with the same information. This made no sense to us.

We heard from the Sustainable Development Technology Foundation, an organization that works with Canadian businesses to bring clean innovative technologies to market. This Foundation was never consulted during the drafting of Bill C-2 and first learned that they were being brought under its umbrella when the bill was tabled in the House of Commons. No protection was afforded for the trade secrets and commercial and proprietary information of the Canadian businesses with which they work.

This was particularly strange, as the Foundation funds companies that later often turn, at a subsequent stage of commercialization and development, to the Business Development Bank of Canada for assistance. Provisions in the Act already protect trade secrets and commercial and proprietary information in the hands of the Business Development Bank. It is passing strange to acknowledge that such information is to be protected at the later stage, while forcing its disclosure — including to potential competitors — at an earlier stage of the process, when in the hands of the Sustainable Development Technology Foundation. Our amendments correct this anomaly and bring the protections in line.

Perhaps the most disturbing testimony we heard concerned the treatment of the National Arts Centre and the Canadian Wheat Board. Both appear to have been the unfortunate victims of partisan politics during the highly-pressured consideration of Bill C-2 in the House of Commons.

The National Arts Centre knew that for the first time, it was going to be brought within the scope of the *Access to Information Act*. A special provision was originally included in Bill C-2 to allow it to keep confidential the terms of its contracts with performers, and also its list of confidential donors. Such a clause was in the bill at first reading in the House of Commons. Representatives of the National Arts Centre appeared before the legislative committee studying Bill C-2 in the House of Commons, and all appeared to be in order. The NAC later learned that this clause was deleted. Jayne Watson, Director of Communications and Public Affairs for the National Arts Centre described for us what happened:

> **Ms. Watson**: I was present at the committee. As Ms. Foster noted, the committee appeared to go well. We had no opposition at all. A member of the committee who was not present during our presentation, Member of Parliament Pat Martin, showed up at a later point in the committee and proposed this amendment. The amendment was voted on and accepted. It completely caught us off guard, because we had been warmly received by the committee at that time.
>
> **Senator Day:** We need more information. Mr. Martin heard none of the debate, none of the discussions, and he came in late in the event and proposed an amendment. Did he tell you why? Did he tell you he did not like the National Arts Centre?
>
> **Ms. Watson:** No. I called Mr. Martin afterwards and tried to find out from him what his reasoning was, but I was not able to determine the thought process. (8:111)

We examined the clause as originally proposed for the National Arts Centre. We agree that it is critical for an arts organization to be able to assure donors who wish to remain anonymous that their confidence will be respected and upheld. We similarly

understand the need to be able to withhold the terms of contracts the NAC negotiates with performers. We do not understand why this clause was deleted, nor was any explanation provided to us. Accordingly, your Committee proposes reinstating the protective provision for the National Arts Centre.

The situation was not dissimilar with respect to the Canadian Wheat Board. That organization — which we were told receives no federal government funding in the normal course — was not part of the *Access to Information Act* when Bill C-2 was originally tabled in the House of Commons. The Board did not appear before the legislative committee studying the bill. It saw no reason to make representations, as the Bill would not apply to its activities. With no consultation, they learned after the fact that they had been added to the Act pursuant to a motion introduced by the same Member of Parliament, Mr. Pat Martin.

We agree with the Canadian Wheat Board that it should not be subject to the *Access to Information Act*. It does not receive any public funding. It is neither an agent of the Crown nor a Crown corporation. We believe that the Canadian Wheat Board, like the NAC, was added to the Schedule for unfathomable reasons. That is not how public policy should be made in this country. Your Committee proposes amend the Bill to remove the Canadian Wheat Board from the *Access to Information Act*.

We are also concerned that as drafted, the *Access to Information Act* would apply retroactively to all information held by the various entities now being brought under the Act, no matter when or how that information came into their possession. We are concerned that businesses or individuals may have provided information, even years ago, to an organization, confident in the belief that the information would be kept confidential. To change the rules now would be wrong. As a matter of principle, we believe that laws should have a retroactive application or effect only rarely and only because of compelling reasons. NO such reasons were advanced to us. Consequently, your Committee has amended the Bill to provide that the *Access to Information Act* will only apply to these new entities with respect to information they create or obtain after the date the entity becomes subject to the Act.

In addition to these major amendments we propose to the *Access to Information Act* provisions of Bill C-2, we have the following observations.

We noted that the Privacy Commissioner and the Information Commissioner are each now subject to their own acts, namely the *Privacy Act* and the *Access to Information Act*. However, as the Privacy Commissioner told us, no provision has yet been made for circumstances where there may be a complaint about the Commissioner under his/her own statute. The Commissioner should not be placed in a position to examine a complaint against his or her own office. *We join with the Privacy Commissioner in urging the Government to delay the entry into force of these measures until an appropriate mechanism to address this situation is identified and in place*.

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

*We urge the Government to ensure consistency in the treatment of various entities. The experience of Sustainable Development Technology Canada provides a cautionary tale of the problems that can result from inconsistent treatment*.

During our hearings we heard that only 49 of the 246 Crown corporations, agencies and foundations will be covered by the *Access to Information Act*. As one witness told us:

> [W]hy are the Canadian Blood Agency and the Nuclear Waste Management Organization not covered by the *Access to Information Act*? These organizations deal with subjects vital to the public's health and safety and are not profit driven. Even the Seaborne panel that set up the nuclear waste agency advised that it be covered by the *Access to Information Act*, but it never was. The decision seems to be, to use an old cliché, a no-brainer. (8:200)

We note that under the Bill, the Governor in Council is authorized to make regulations prescribing criteria for adding a body or office to the Schedule of other government institutions. We believe, and the experience of the Canadian Wheat Board with Bill C-2 underscores the need for this. The criteria should be set out in legislation so that it can be fully considered and debated by both Houses of Parliament.

During your Committee's study of Bill C-2, there were press reports suggesting that the identity of a person who requested access to information under the Act, had been shared among government officials who were reviewing the request, including members of ministers' staffs. We believe that Canadians have the right to request information from their Government without people in political positions knowing who they are. This is a central principle of our *Access to Information Act* and a critical element of our privacy protections. We strongly condemn any actions by government officials — whether political staffs of ministers or members of the public service — that violate these principles. We urge the Government to ensure that the provisions of the law are known, understood and upheld by all.

Bill C-2 also introduces amendments to the *Privacy Act*. The Privacy Commissioner (who, like the Information Commissioner, was not consulted during the drafting of Bill C-2) appeared before your Committee. She stressed that "privacy is key to achieving the goal of greater accountability in government. Bill C-2 makes some amendments to the *Privacy Act*, but much more needs to be done to make this nearly 25-year old law meet modern privacy requirements. A real *Privacy Act* reform is a pre-condition for achieving true government accountability and transparency." (8:135)

Because the *Privacy Act* is so out-dated, the Commissioner found herself in the unusual position of arguing that Crown corporations not be brought within the *Privacy Act*, as Bill C-2 proposes, but rather left where they are, so they fall within the modern private sector privacy statute, the *Personal Information Protection and Electronic Documents Act* (PIPEDA).

We urge the government to make it a priority to work closely with the Privacy Commissioner — not to exclude her, as happened in the drafting of Bill C-2 — and to modernize the *Privacy Act* by taking action on the report the Privacy Commissioner tabled with the House of Commons Standing Committee on Access to Information, Privacy and Ethics in June.

**VI. Whistleblower Protection**

The *Public Servants Disclosure Protection Act* (Bill C-11), prepared by the previous Government, was passed by the last Parliament, after extensive study, on November 25, 2005, immediately before the dissolution of Parliament. Almost one year has passed since then, yet the current Government has refused to proclaim that Act into force. As Michelle Demers, President of the Professional Institute of the Public Service of Canada, told your Committee:

> While there are many changes [in Bill C-2] we support, we must point out that Bill C-11, the *Public Servants Disclosure Protection Act*, which received Royal Assent last year, remains unproclaimed and without effect. We have fought for these protections for more than 15 years and have watched many initiatives come and go with the fortunes of politics. Had Bill C-11 been proclaimed, at least our members would have been protected. (10:109)

The current Government has regrettably refused to proclaim the Act into force, holding its protections hostage to the fate of Bill C-2, while accusing the Senate of Canada and your Committee of "foot-dragging" to impede Bill C-2's "significant reform in...improved protections for whistleblowers." [Minister John Baird, "An achievement in foot-dragging", *Ottawa Citizen*, October 21, 2006.] This is simply false and an affront to those courageous Canadians who have stepped forward to disclose wrongdoings. In point of fact, we heard during our hearings, Bill C-2 characterized as a "cruel delusion" in its whistle-blowing protection (9:108). Joanna Gualtieri, Director of the Federal Accountability Initiative for Reform (FAIR) and one of the most prominent, determined and passionate advocates for whistleblower protection in Canadian history, told your Committee:

> I have reflected on the fact that it has been said that the senators really must pass this bill because, if they do not, they will be seen to be turning their backs on accountability. We genuinely believe that the Senate's finest hour will be found in being proponents of accountability. That will be done by getting back to the drawing board and doing this right. We have waited a long time for whistle-blowing protection. The public service and Canadians are dependent on you to implement this correctly. (9:98)

Your Committee was conscious of the long delays already suffered in making federal whistleblower protection a reality. Accordingly, we focused our amendments on those provisions that we believe are the most critical.

Minister John Baird wrote in the *Ottawa Citizen* that under Bill C-2, the *Public Servants Disclosure Protection Act* "will be extended to all federal bodies." This is false. The Communications Security Establishment and the Canadian Security Intelligence Service would not be covered. Your Committee believes this is wrong. Our amendments will make good on that promise, and extend the protection of the *Public Servants Disclosure Protection Act* to members of these federal bodies. In the post 9/11 world, particularly in light of the significant additional expenditures on defence and security, we want assurance that our counter-terrorism agencies are operating scrupulously within the law. We want members of CSIS and CSE to feel confident in coming forward to report any wrongdoing.

Your Committee also proposes replacing the current definition of "reprisal" with a borader, open-ended one. This amendment, first identified by Mr. Justice Gomery but ignored by the current Government, was characterized as "critical" by Ms. Gualtieri, and emphatically supported by Allan Cutler, another prominent Canadian whistleblower. We remain puzzled about why the government would have dismissed Mr. Justice Gomery's recommendation and instead proposed a much more restrictive definition of what constitutes reprisals by employers against whistleblowers.

Our amendments will also reverse the onus in cases involving reprisals. We recognize that just as there are a myriad of ways in which an employer can take reprisal against an employee disclosing wrongdoing, so are there many ways an employer can credibly claim that what is being done is not reprisal. Our amendment would provide that if the action complained of occurs within a year of the protected disclosure, then it is presumed to be a reprisal, and the burden of proving that it was not shifts to the employer.

Bill C-2 imposes a 60-day limitation period for a public servant to file a complaint. This was described to us as far too short a time. Mr. Cutler told us, "A good employee, who has goodwill, will run out of the time period because management has great power and ability to stall and use up all the time. Sixty days is not enough, and that must be fixed." Our amendment extends this to one year.

Your Committee was dismayed to see that Bill C-2 imposed a statutory upper limit of $10,000 on the damages that could be awarded by the new Public Servants Disclosure Protection Tribunal for pain and suffering. Ms. Gualtieri described this provision as "another provision in the bill that is an assault on public servants." (9:123) Your Committee has amended this provision to remove the statutory upper limit, and leave the assessment of these damages to the discretion of the Tribunal.

We were also taken aback to see the limits on fees for legal advice that the Commissioner could order reimbursed to whistleblowers. Subsections 25.1(4) and (5) would have imposed a cap of $1,500 that could be reimbursed to a whistleblower for legal advice; in "exceptional circumstances" this could be raised to $3,000, under subsection 25.1(6).

As Ms. Gualtieri said, this is "surreal". While we recognize that awards are unlikely to truly allay the cost of legal advice, your Committee has proposed, as a means to somewhat "level the playing field" between the whistleblower and the employer, that the Commissioner be authorized to order reimbursement for legal advice in an amount equivalent to that provided in Treasury Board guidelines.

Your Committee has also adopted a number of the recommended amendments put forward by Dr. Edward W. Keyserlingk, the current Public Sector Integrity Officer. We

were disheartened to hear that Dr. Keyserlingk, like the vast majority of the officers, agents and advisers who now serve Parliament and the Executive in the areas covered by Bill C-2, was not consulted by the drafters of the bill for advice and input during its preparation. Insofar as we could, we have sought to rectify this, and incorporated many of his proposed amendments.

Giving effect to his recommendation, however, for procedural reasons, was not always possible. For example, it was proposed by Dr. Keyserlingk and others, that we amend the bill to allow private sector contractors and grant recipients access to the federal Commissioner to file a complaint and to receive remedial orders from the Tribunal. The Conservative Party had promised in its election platform that it would include this protection in whistleblower legislation. It was conspicuously absent from Bill C-2, and because of this, your Committee is advised that such an amendment would now be beyond the scope of the bill and therefore outside our power to introduce. In addition, questions of the enforceability of these provisions were raised. In the circumstances, *we do not propose this amendment at this time, but strongly urge the Government to explore ways in which this protection could be so extended, including in the standard contractual terms for contractors and grant recipients.*

To conclude with this part of the Bill C-2 package, your Committee heard powerful testimony from witnesses who clearly felt betrayed by the contents of this legislation. Promises had been made that were then ignored when the bill was drafted. Thought the Government, as recently as a few days ago sought to perpetuate the myth that Bill C-2 "would give real protection for whistleblowers," the testimony heard by your Committee told a very different story.

**VII. Public Appointments Commission**

Bill C-2 would authorize the Governor in Council to establish a Public Appointments Commission to oversee, monitor, review and report on the selection process for Governor in Council appointments.

Your Committee was regrettably unable to study this proposal as thoroughly as it wished. We asked four Deputy Ministers to appear before us, so that we could learn about the appointment process that is currently in place. The Government failed to produce any of the four requested Deputy Ministers. While we understand that scheduling issues are always a concern, we were disappointed that the Government, while proclaiming Bill C-2 to be of the highest priority and urgency, nevertheless failed to produce a single requested Deputy Minister to speak to this issue.

We support the proposal of a Public Appointments Commission. As mandated in Bill C-2, the Commission would not be responsible for vetting particular appointments, but rather would be responsible for establishing a "fair, open and transparent" appointments process, and ensuring that all appointments are based on merit. The credibility and success of this Commission will depend in large part on the quality of the code of practice they establish. There is no statutory requirement that this Code be placed before Parliament or the public. *We urge the Government to make this Code public, as soon as it has been prepared, so that the public and Parliamentarians may review it and make representations on its merits or anticipated problems.* It would be questionable at best to seek to open up the appointments process to greater transparency and accountability, while failing to allow Canadians to see and comment upon the Code proposed to govern that process.

The major amendment we have made to these sections of Bill C-2 is to require that the Commission be established. We are aware of press reports that suggest that because the first candidate put forward by the Prime Minister to chair this Commission was not acceptable to the committee in the House of Commons who reviewed that proposal, the Prime Minister will use his discretion and simply not establish the Commission. We believe that is wrong. Bill C-2 includes provisions for the establishment of the Public Appointments Commission; we have been told throughout our deliberations that this Bill is a priority for the Government, and "a central portion of the new Government's agenda". We take the Government at its word that the proposed Commission is important to ensure accountability and transparency in the appointments process. If so, then the Act should make it mandatory that the Commission in fact is established, and not left to the discretion of the Prime Minister.

**VIII. Director of Public Prosecutions**

Your Committee heard testimony that raised doubts about the merits of establishing the new Director of Public Prosecutions. The first testimony we heard on the issue was from Arthur Kroeger, chair of the Canadian Policy Research Networks and former Deputy Minister in five federal government departments. He told us:

> If the legislation had been written by a government with more experience in office, it may not have some items in it that it does, which I will explain in a minute. There is the other problem that some of the contents of legislation were, I think, developed during an election campaign, and there is always a risk of a bit of overkill for the sake of achieving a public effect during an electoral contest, which is readily understandable. The director of public prosecutions, to which you refer, is a good example of measures where the bill goes fairly far and adds some items. I am not clear as to what problem it intends to solve. You have a deputy minister of justice; you have an assistant deputy minister, whose function is prosecutions. Virtually, all prosecution is handled under the Criminal Code and administered by the provinces. I am puzzled as to why the position was necessary, and, in particular, if you already have a deputy minister of justice, why would you create a second deputy minister position to manage a function that, at least viewed from outside, seems to be rather limited. That is an example where it might have come out differently had people of more experience been directly involved in writing the legislation. There may be a problem there that I am not aware of, but I was puzzled by that particular position. (3:100)

The Minister of Justice admitted that there is no problem with prosecutorial independence at the federal level. He testified, "The men and women who constitute the Federal Prosecution Service have been faithful guardians of prosecutorial independence. We are not here to correct a problem that has already occurred; we are here to prevent problems from arising in the future." (3:130)

The new Director of Public Prosecutions would not only be responsible for prosecutions that traditionally were handled by the federal prosecutorial service. Under Bill C-2, responsibility for all prosecutions under the *Canada Elections Act* would be taken away from the Commissioner of Elections, and given instead to the new Director of Public Prosecutions.

The Commissioner of Elections is appointed by the independent Officer of Parliament, the Chief Electoral Officer of Canada. Together they form the backbone of Elections Canada. The Commissioner's integrity and impartiality has never been impugned. Elections Canada is highly respected throughout Canada and around the world. Dr. Peter Aucoin, who appeared before your Committee as a witness, wrote a recent paper for the Organization of American States, in which he discussed the Commissioner's role in enforcement of the elections system. He then continued, "The Chief Electoral Officer/Elections Canada structure has long been an established and respected institution in the electoral process. Their independence of government and impartiality in respect to partisan politics is universally accepted, or at least as nearly universal as can be in a partisan-political environment. The staff of Elections Canada is professional and technically competent."

We agree. We asked the Chief Electoral Officer, Jean-Pierre Kingsley, whether he personally feels that the proposed transfer from the Commissioner to the proposed Director of Public Prosecutions was necessary. He was unequivocal: "I do not personally think that such a change was necessary." (7:158) The Chief Electoral Officer of Canada elaborated, telling your Committee, "The bill does not address any particular matter that may have been problematic in the past for the commissioner." (7:158)

Once again, we had a solution in search of a problem and your Committee was confronted with a policy decision by the current Government whose merits seem questionable based on the testimony from expert witnesses. However, again we recognize that this policy was an important plank in the Conservative Party's platform in the recent election, and we are reluctant to reject it altogether. The former Chief Justice of Canada, Antonio Lamer, while pointing out to us that we have been living without a Director of Public Prosecutions at the federal level since Confederation, nevertheless suggested that the justice system cannot have too many eyes giving a "second look" to a proposed prosecution.

We were, however, concerned to see the proposed appointment process for the new Director of Public Prosecutions. The Government has suggested that the new Director of Public Prosecutions will ensure prosecutorial independence from political concerns or interference. In other words, the purpose is to de-politicize prosecutions beyond any doubt. However, when your Committee began to scrutinize the details of the proposed legislation, we were surprised to see the degree of control exercised by the Minister of Justice in his or her capacity as Attorney General, over the selection process for the person being chosen to serve in this position.

As proposed in Bill C-2, the Minister of Justice would have absolute control over the list of candidates for the position of Director of Public Prosecutions. The Minister would propose a list of 10 names; that list would then be passed to a selection committee; and the selection committee would choose 3 candidates from the list — but pursuant to the statute, they could only choose from among the Minister's list. There are many excellent safeguards included in the Bill, including the carefully constructed composition of the selection committee, designed to achieve both a high level of legal knowledge and political impartiality, as well as the requirement for approval of the appointment by a parliamentary committee — but throughout the whole process, the choices and discretion are confined within the parameters set by the Minister, namely his or her list of 10 names.

Your Committee is proposing to amend this. We propose that the selection committee will compile the list of candidates, and then the process as set out in the Bill will continue, with the choice of final candidate made by the Minister and then referred to a parliamentary committee.

We also noted that the section was drafted to refer to approval by "a committee designated or established by Parliament for that purpose." This language is inaccurate under our parliamentary system, as "Parliament" does not designate or establish committees. We have corrected this language.

**IX. Conclusion**

Your committee was encouraged that when Minister Baird was asked whether the government "would be ready to receive amendments from the Senate," he concluded his response by saying: "if you have ideas and suggestions to make this bill a better bill, I welcome them" (3:50-1). Your committee firmly believes that the "ideas and suggestions" contained in this report would make this bill a better bill and would result in an Act that took a significant step forward in providing Canadians with greater transparency and accountability from their Government.

## APPENDIX

## LIBRARY OF PARLIAMENT

## PROVINCIAL COMPARISONS OF POLITICAL CONTRIBUTION

## LIMITS AND SOURCE RESTRICTIONS

### NEWFOUNDLAND AND LABRADOR

*Elections Act, 1991*, S.N.L. 1992, c. E-3.1

**A. Contribution Limits**

- N/A

**B. Source Restrictions or Prohibitions**

- Individuals, corporations and trade unions can make contributions to registered parties and candidates (s. 282(1)).
- There is no mention of constituency associations, leadership contestants or nomination contestants.

### PRINCE EDWARD ISLAND

*Election Expenses Act*, R.S.P.E.I. 1988, c. E. 2.01

**A. Contribution Limits**

- N/A

**B. Source Restrictions or Prohibitions**

- Contributions to registered parties and registered candidates may be made only by individuals, corporations and trade unions (s. 11(1)).

**NOVA SCOTIA**

*Members and Public Employees Disclosure Act*, S.N.S. c. 4

**A. Contribution Limits**

- N/A

**B. Source Restrictions or Prohibitions**

- Contributions may be made to a recognized party, a candidate and an electoral district association (s. 3(e)).
- Contributions may be made by individuals, partnerships, organizations, corporations, and unions (s. 8(b)).

**NEW BRUNSWICK**

*Political Process Financing Act, S.N.B. 1978*, c. P-9.3

**A. Contribution Limits**

- A maximum of $6,000 during a calendar year to (s. 39(1)):
  - each registered political party or to a registered district association of that registered political party, and to
  - one registered independent candidate.

**B. Source Restrictions or Prohibitions**

- Individuals, corporations and trade unions may make the maximum contribution.
- Contributions may only be made to a registered political party, registered district association and to one registered independent candidate (ss. 37, 38).

**QUEBEC**

*Election Act*, R.S.Q. c. E-3.3

**A. Contribution Limits**

- A maximum of $3,000 to each party, independent Member and independent candidate, collectively, during the same calendar year (s. 91).

**B. Source Restrictions or Prohibitions**

- Only individuals may make a contribution. (s. 87)

**ONTARIO**

*Election Finances Act*, *R.S.O. 1990, c. E.7*

**A. Contribution Limits**

- The maximum contributions a person, corporation or trade union may make are (s. 18(1)):
  - $7,500 to each party in any calendar year, and in any campaign period, as if it were a separate calendar year;
  - $1,000, in any calendar year to each constituency association;
  - an aggregate of $5,000 to the constituency associations of any one party, in any calendar year;
  - $1,000 to each candidate in any campaign period; and
  - an aggregate of $5,000 to candidates endorsed by any one party, in any campaign period.

**B. Source Restrictions or Prohibitions**

- Individuals, corporations and trade unions may contribute to parties, candidates and constituency associations.

**MANITOBA**

*Elections Finances Act*, *C.C.S.M. c. E32*

**A. Contribution Limits**

- Individuals may contribute a maximum of:
  - $3,000 in a calendar year, to candidates, constituency associations or registered political parties or any combination of them (s. 41(1.1));
  - $3,000 to one or more leadership contestants during a leadership contest (s. 41(1.1.1)).

**B. Source Restrictions or Prohibitions**

- Only individuals may contribute to a candidate, constituency association, registered political party or leadership contestant (s. 41(1)).

**SASKATCHEWAN**

*Election Act, 1996*, S.S. 1996, c. E-6.01

**A. Limit on Contribution Limits**

- N/A

**B. Source Restrictions or Prohibitions**

- N/A (except for Canadian citizenship requirement)

**ALBERTA**

*Election Finances and Contributions Disclosure Act*, R.S.A. 2000, c. E-2

**A. Contribution Limits**

- Contributions by individuals, corporations, trade unions or employee organizations to registered parties, registered constituency associations or registered candidates must not exceed:
  - In any year (s. 17(1)(a):
    - $15,000 to each registered party;
    - $1,000 to any registered constituency association; and
    - $5,000 in the aggregate to the constituency associations of each registered party.
  - In any campaign period (s. 17(1)(b)):
    - $30,000 to each registered party less any amount contributed to the party in that calendar year;
    - $2,000 to any registered candidate; and
    - $10,000 in the aggregate to the registered candidates of each registered party.

**B. Source Restrictions or Prohibitions**

- Contributions may be made by individuals, corporations, trade unions and employee organizations.

**BRITISH COLUMBIA**

*Election Act*, R.S.B.C. 1996, c. 106

**A. Contribution Limits**

- Registered political parties or constituency associations may accept a maximum of $10,000 in permitted anonymous contributions (s. 188(1)).
- Candidates, leadership contestants and nomination contestants may accept a maximum of $3,000 in permitted anonymous contributions (s. 188(2)).

**B. Source Restrictions or Prohibitions**

- An unregistered political party or unregistered constituency association and charitable organizations are not permitted to make a political contribution.

**YUKON TERRITORY**

*Elections Act*, R.S.Y. 2002, c. 63

**A. Contribution Limits**

- N/A

**B. Source Restrictions or Prohibitions**

- The wording of the relevant legislative provisions suggests that only registered political parties and candidates may receive contributions (ss. 370-385).

**NORTHWEST TERRITORIES**

*Elections Act*, R.S.N.W.T. 1988, c. E-2

**A. Contribution Limits**

- An individual or a corporation may contribute a maximum of $1,500 to a candidate during a campaign period (168(2.1)).
- A candidate may contribute a maximum of $30,000 of his or her own funds to his or her own campaign in the pre-election and campaign periods (168(3)).

**B. Source Restrictions or Prohibitions**

- Only individuals and corporations may make contributions to a candidate during an election period (168(2)).

# THE SENATE OF CANADA
# PROGRESS OF LEGISLATION

(*indicates the status of a bill by showing the date on which each stage has been* ***completed***)

## (1st Session, 39th Parliament)

## Thursday, October 26, 2006

(**Where royal assent is signified by written declaration, the Act is deemed to be assented to on the day on which the two Houses of Parliament have been notified of the declaration.*)

### GOVERNMENT BILLS
### (SENATE)

| No. | Title | 1st | 2nd | Committee | Report | Amend | 3rd | R.A. | Chap. |
|---|---|---|---|---|---|---|---|---|---|
| S-2 | An Act to amend the Hazardous Materials Information Review Act | 06/04/25 | 06/05/04 | Social Affairs, Science and Technology | 06/05/18 | 0 | 06/05/30 | | |
| S-3 | An Act to amend the National Defence Act, the Criminal Code, the Sex Offender Information Registration Act and the Criminal Records Act | 06/04/25 | 06/06/22 | Legal and Constitutional Affairs | | | | | |
| S-4 | An Act to amend the Constitution Act, 1867 (Senate tenure) | 06/05/30 | | (subject-matter 06/06/28 Special Committee on Senate Reform) | (report on subject-matter 06/10/26) | | | | |
| S-5 | An Act to implement conventions and protocols concluded between Canada and Finland, Mexico and Korea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income | 06/10/03 | | | | | | | |

### GOVERNMENT BILLS
### (HOUSE OF COMMONS)

| No. | Title | 1st | 2nd | Committee | Report | Amend | 3rd | R.A. | Chap. |
|---|---|---|---|---|---|---|---|---|---|
| C-2 | An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability | 06/06/22 | 06/06/27 | Legal and Constitutional Affairs | 06/10/26 | 156 observations | | | |
| C-3 | An Act respecting international bridges and tunnels and making a consequential amendment to another Act | 06/06/22 | 06/10/24 | Transport and Communications | | | | | |
| C-4 | An Act to amend An Act to amend the Canada Elections Act and the Income Tax Act | 06/05/02 | 06/05/03 | Legal and Constitutional Affairs | 06/05/04 | 0 | 06/05/09 | 06/05/11 | 1/06 |
| C-5 | An Act respecting the establishment of the Public Health Agency of Canada and amending certain Acts | 06/06/20 | 06/09/28 | Social Affairs, Science and Technology | | | | | |

| No. | Title | 1st | 2nd | Committee | Report | Amend | 3rd | R.A. | Chap. |
|---|---|---|---|---|---|---|---|---|---|
| C-8 | An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2007 (*Appropriation Act No. 1, 2006-2007*) | 06/05/04 | 06/05/09 | — | — | — | 06/05/10 | 06/05/11 | 2/06 |
| C-13 | An Act to implement certain provisions of the budget tabled in Parliament on May 2, 2006 | 06/06/06 | 06/06/13 | National Finance | 06/06/20 | 0 | 06/06/22 | 06/06/22* | 4/06 |
| C-15 | An Act to amend the Agricultural Marketing Programs Act | 06/06/06 | 06/06/13 | Agriculture and Forestry | 06/06/15 | 0 | 06/06/20 | 06/06/22* | 3/06 |

## COMMONS PUBLIC BILLS

| No. | Title | 1st | 2nd | Committee | Report | Amend | 3rd | R.A. | Chap. |
|---|---|---|---|---|---|---|---|---|---|

## SENATE PUBLIC BILLS

| No. | Title | 1st | 2nd | Committee | Report | Amend | 3rd | R.A. | Chap. |
|---|---|---|---|---|---|---|---|---|---|
| S-201 | An Act to amend the Public Service Employment Act (elimination of bureaucratic patronage and geographic criteria in appointment processes) (Sen. Ringuette) | 06/04/05 | 06/06/22 | National Finance | 06/10/03 | 1 | | | |
| S-202 | An Act to repeal legislation that has not come into force within ten years of receiving royal assent (Sen. Banks) | 06/04/05 | 06/05/31 | Legal and Constitutional Affairs | 06/06/15 | 1 | 06/06/22 | | |
| S-203 | An Act to amend the Public Service Employment Act (priority for appointment for veterans) (Sen. Downe) | 06/04/05 | Dropped from the Order Paper pursuant to Rule 27(3) 06/06/08 | | | | | | |
| S-204 | An Act respecting a National Philanthropy Day (Sen. Grafstein) | 06/04/05 | | | | | | | |
| S-205 | An Act to amend the Food and Drugs Act (clean drinking water) (Sen. Grafstein) | 06/04/05 | | | | | | | |
| S-206 | An Act to amend the Criminal Code (suicide bombings) (Sen. Grafstein) | 06/04/05 | | | | | | | |
| S-207 | An Act to amend the Criminal Code (protection of children) (Sen. Hervieux-Payette, P.C.) | 06/04/05 | | | | | | | |
| S-208 | An Act to require the Minister of the Environment to establish, in co-operation with the provinces, an agency with the power to identify and protect Canada's watersheds that will constitute sources of drinking water in the future (Sen. Grafstein) | 06/04/06 | | | | | | | |
| S-209 | An Act concerning personal watercraft in navigable waters (Sen. Spivak) | 06/04/25 | | | | | | | |

| No. | Title | 1st | 2nd | Committee | Report | Amend | 3rd | R.A. | Chap. |
|---|---|---|---|---|---|---|---|---|---|
| S-210 | An Act to amend the National Capital Act (establishment and protection of Gatineau Park) (Sen. Spivak) | 06/04/25 | | | | | | | |
| S-211 | An Act to amend the Criminal Code (lottery schemes) (Sen. Lapointe) | 06/04/25 | 06/05/10 | Social Affairs, Science and Technology | 06/06/13 | 0 | 06/10/17 | | |
| S-212 | An Act to amend the Income Tax Act (tax relief) (Sen. Austin, P.C.) | 06/04/26 | Bill withdrawn pursuant to Speaker's Ruling 06/05/11 | | | | | | |
| S-213 | An Act to amend the Criminal Code (cruelty to animals) (Sen. Bryden) | 06/04/26 | 06/09/26 | Legal and Constitutional Affairs | | | | | |
| S-214 | An Act respecting a National Blood Donor Week (Sen. Mercer) | 06/05/17 | 06/10/03 | Social Affairs, Science and Technology | | | | | |
| S-215 | An Act to amend the Income Tax Act in order to provide tax relief (Sen. Austin, P.C.) | 06/05/17 | | | | | | | |
| S-216 | An Act providing for the Crown's recognition of self-governing First Nations of Canada (Sen. St. Germain, P.C.) | 06/05/30 | | | | | | | |
| S-217 | An Act to amend the Financial Administration Act and the Bank of Canada Act (quarterly financial reports) (Sen. Segal) | 06/05/30 | 06/10/18 | National Finance | | | | | |
| S-218 | An Act to amend the State Immunity Act and the Criminal Code (civil remedies for victims of terrorism) (Sen. Tkachuk) | 06/06/15 | | | | | | | |
| S-219 | An Act to amend the Parliamentary Employment and Staff Relations Act (Sen. Joyal, P.C.) | 06/06/27 | | | | | | | |
| S-220 | An Act to protect heritage lighthouses (Sen. Carney, P.C.) | 06/10/03 | | | | | | | |

## PRIVATE BILLS

| No. | Title | 1st | 2nd | Committee | Report | Amend | 3rd | R.A. | Chap. |
|---|---|---|---|---|---|---|---|---|---|
| S-1001 | An Act respecting Scouts Canada (Sen. Di Nino) | 06/06/27 | 06/10/26 | Legal and Constitutional Affairs | | | | | |

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**Thursday, October 26, 2006**

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