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**Friday, November 7, 2003**



THE HONOURABLE DAN HAYS  
SPEAKER

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## THE SENATE

Friday, November 7, 2003

The Senate met at 9 a.m., the Speaker in the Chair.

[*Translation*]

Prayers.

### ROYAL ASSENT

#### NOTICE

The **Hon. the Speaker** informed the Senate that the following communication had been received:

RIDEAU HALL

November 7, 2003

Mr. Speaker,

I have the honour to inform you that the Right Honourable Adrienne Clarkson, Governor General of Canada, will proceed to the Senate Chamber today, the 7th day of November, 2003, at 1 p.m., for the purpose of giving Royal Assent to certain bills of law.

Yours sincerely,

Barbara Uteck  
*Secretary to the Governor General*

The Honourable  
The Speaker of the Senate  
Ottawa

[*English*]

### THE SENATE

#### PERMISSION TO PHOTOGRAPH ROYAL ASSENT— WESTRAY BILL

**The Hon. the Speaker:** Honourable senators, I have been asked to put this question to the house. Is it agreed that a still photographer be permitted to take photographs during the Royal Assent ceremony?

**Hon. John Lynch-Staunton (Leader of the Opposition):** Could His Honour tell the house at whose request this would be done?

**The Hon. the Speaker:** I received the request from the Table.

**Hon. Bill Rompkey:** Honourable senators, the request is from the Westray families. I discussed it with the opposition whip, the Honourable Senator Stratton, and we agreed that on this special occasion those families should be given an opportunity to ask for leave to have photographs taken.

**Hon. Marcel Prud'homme:** Honourable senators, I agree in this case. However, all senators recall the damage that once occurred when a photograph was taken in the chamber before there was a relevant rule. In that photograph, a senator appeared to be sleeping. That image was on Quebec television every night for three years. If that kind of damage does not happen again and if the whips bring together as many senators as possible for Royal Assent, then I would agree to this request.

**Senator Rompkey:** Honourable senators, the photograph will not be of the Senate but of the Royal Assent ceremony and her Excellency the Governor General receiving Bill C-45.

**Hon. John G. Bryden:** Honourable senators, I want to be certain that the Westray bill is on the list for Royal Assent today. I noticed at the end of Bill C-45 that it will come into force on a day or days to be fixed by order of the Governor in Council.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, that has nothing to do with the Royal Assent date.

**Senator Bryden:** I understand, thank you.

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

**Hon. Senators:** Agreed.

**Senator Lynch-Staunton:** Honourable senators, I would like to know where the photographer will be. Will people with a particular interest in Bill C-45 be on the floor? How far will this be taken? I believe this will set a dangerous precedent. Bill C-45 is called the "Westray bill," but it does not help the Westray miners.

**Senator Rompkey:** Honourable senators, as far as I know, the photographer will be in the gallery to photograph the Royal Assent ceremony. The Westray people will be there as well.

• (0910)

[*Translation*]

## SENATORS' STATEMENTS

### THE SENATE

#### EXPRESSION OF GRATITUDE TO SENATORS AND STAFF

**Hon. Lise Bacon:** Honourable senators, it seems fitting today to take a few moments to warmly thank all those who have worked in cooperation with the Standing Senate Committee on Internal Economy, Budgets and Administration over the past several months. A committee responsible for internal economy cannot do its work without the support of those affected by its decisions, meaning the senators themselves, whom we serve, and the Senate administration, those public servants who serve this institution with loyalty and devotion.

On numerous occasions, I have insisted on our need for the honourable senators' cooperation in order to accomplish our mission. Some have responded positively to my invitation; others have dismissed it out of hand. But this morning, I want to express my gratitude toward and appreciation of those colleagues who encouraged me in my endeavours and who made this mission easier. For me and my committee, the mission was quite simply the proper management of Senate resources. In the eyes of Canadians, we were responsible for ensuring effective management of government funds. We fulfilled this mandate to the best of our abilities, knowing that ethical behaviour was central to our mission. For all my colleagues who were sensitive to this undeniable reality, I have just two words: thank you.

I must mention the remarkable work of all the Senate staff. I cannot forget their unfailing dedication, their ability to work under often intense pressure and their understanding of the purpose and grandeur of the institution they serve. If these men and women serve the Senate to the very best of their abilities, it is because they believe in the nobility of the upper chamber and its essential role in our parliamentary system.

The Senate staff includes employees at all levels: support staff, professionals and managers who are motivated and determined individuals providing high quality services. This dedication is mainly due to their unwavering pride in serving an institution that contributes to the quality of parliamentary exchange and the necessary reflection on key issues, and one that represents minorities and the provinces.

I thank the Senate staff and congratulate them, particularly those with whom I have worked closely, namely, the entire management team. They have worked wonders because of the strength of their commitment and of their motivation.

In closing, I want to call on all honourable senators to join me in thanking all our staff for the excellent job they are doing. We, in the Senate, must earn the dedication of those serving this institution. By our actions, we must seek to make everyone proud of the people who represent them in this chamber and who bear the title of honourable.

[English]

### REMEMBRANCE DAY 2003

**Hon. Sharon Carstairs (Leader of the Government):** "In Flanders Fields the poppies blow."

Honourable senators, on November 11, as always, Canadians will gather and they will mourn those who made the ultimate sacrifice for their country and gave their lives so that Canadians could live in a free and democratic country.

Earlier this week, honourable senators, we passed a bill entitled the Holocaust Memorial Day bill. We passed that bill, I believe,

[ Senator Bacon ]

not just because those who went through that horror must remember but that we all remember.

At that time, I indicated that I hoped a result of the bill would be that children across the country would learn of that horror. Equally, they need to learn of the horror of war. They need to learn of the bravery of good men and women. They need to learn that we must protect those freedoms that are most important to us.

I particularly congratulate the veterans, some of whom are getting quite old. They are going into the classrooms and the schools and talking to our young people. What is their message? Their message is: Let us not have war unless we absolutely have to, but if we have to, then, please, honour those who have gone before. Honour those who are serving now in places like Afghanistan and those who will serve in the future.

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

**Hon. J. Michael Forrestall:** "Between the crosses, row on row."

Honourable senators, this year has been chosen by the Department of Veterans Affairs to remember what has become known as the "Forgotten War," if you will pardon that stretch of imagination.

The Korean War was unique. Like other wars, it created hardship, claimed lives and injured people. It taught us national lessons. It taught us that we were able to mobilize for good reasons. In 1953, it taught a generation of Canadians, who were too young to have joined the Second World War but old enough for the Korean war, that we, too, like our predecessors, had philosophers. We had people who would write for us about these trying times.

An entire generation of Canadians was without that kind of help. We did not have the music, as Senator Banks will know, to turn to. The great writers had either written or were preparing to write. No one wrote of war for the children who grew up in the 1930s and 1940s. We had a particular lesson to learn.

I join with the Leader of the Government in the Senate in indicating to the families of all those who served in Korea our deepest sympathy and our heartfelt thanks for their contribution and ask that the souls of their loved ones rest in peace.

• (0920)

Because the Royal Canadian Navy was first to offer help in this conflict — they are placed, of course, at the head of the battle list — I want to put the following list on the record for posterity:

The Royal Canadian Navy: *HMCS Athabaskan*, *HMCS Cayuga*, *HMCS Sioux*, *HMCS Nootka*, *HMCS Huron*, *HMCS Iroquois*, *HMCS Crusader* and the *HMCS Haida*.

The Canadian Army: Lord Strathcona's Horse (Royal Canadians); 2nd Field Regiment, Royal Canadian Horse Artillery; 1st Regiment, Royal Canadian Horse Artillery; 81st Field Regiment, Royal Canadian Artillery; The Corps of Royal Canadian Engineers; The Royal Canadian Corps of Signals; The Royal Canadian Regiment — 2nd Battalion, 1st Battalion and 3rd Battalion; The Princess Patricia's Canadian Light Infantry — 2nd Battalion, 1st Battalion and 3rd Battalion; The Royal 22nd Regiment — 2nd Battalion, 1st Battalion, and 3rd Battalion; The Royal Canadian Army Service Corps; The Royal Canadian Army Medical Corps; The Royal Canadian Dental Corps; Royal Canadian Ordnance Corps; The Corps of Royal Canadian Electrical and Mechanical Engineers; Royal Canadian Army Pay Corps; The Royal Canadian Postal Corps; The Royal Canadian Army Chaplain Corps; The Canadian Provost Corps; and the Canadian Intelligence Corps.

Royal Canadian Air Force: No. 426 (Thunderbird) Squadron — in addition, 22 RCAF pilots flew with the U.S. Fifth Air Force.

Honourable senators, I wish to put that list on the record so that students, down the road, will know that Canada participated to its fullest, that all of its troops from its three Armed Forces contributed to that international undertaking.

Therefore, we remember the "Forgotten War," and we remember those who fought in it. For anyone who wants to visit, it is a delightful country. One veteran said to a group of us, which included a young Canadian who had asked how he felt today, 50 years later, and he looked at the small gathering around him and said, "You know, I guess it was worthwhile." God bless him.

**Hon. Marcel Prud'homme:** Honourable senators, I was getting up on a subject that I wanted to talk about yesterday, but before doing so I will join Senators Carstairs and Forrestall in paying homage to all those who have sacrificed their lives in the service of peace and justice in the world and for Canada.

I had the honour to represent the Right Honourable John Turner once on November 11, at the same ceremony to which we were invited yesterday by Honourable Senator Carstairs to attend next Tuesday, if we are in Ottawa. However, in my district there is one place in particular, called the Flanders Hall. Unfortunately, the veterans are all dying and my district has changed considerably. Now there are new Canadians from all over the world, and they are very surprised when they see a small parade and a wreath, not knowing what this ceremony is all about. I am thankful that Honourable Senators Carstairs and Forrestall have reminded us that education is the only way to perpetuate the remembrance of these people, and to also remind them of the horrible tragedies that will be referred to this week.

## BHUPINDER LIDDAR

### CONGRATULATIONS ON APPOINTMENT AS CONSUL GENERAL

**Hon. Marcel Prud'homme:** Honourable senators, my second point is to rejoice. Canada is such a fast-changing society. The Prime Minister was very happy to announce this week the first nomination ever of a Canadian Sikh to become the head of a diplomatic mission. We all know it is Mr. Bhupinder Singh Liddar, who is a very familiar person on Parliament Hill. He has been publisher and editor of the prestigious *Diplomat & International Canada* magazine that we read in our offices every month and on which we all rely for valuable information. Mr. Liddar has contributed to *The Diplomatic World* program on CPAC, and is a regular columnist for the *Hill Times*. He was appointed on October 21. He speaks — and look at the description of the first Canadian to represent us — Punjabi, Swahili, English, and I can attest that his French is getting a little bit better every day.

## ROUTINE PROCEEDINGS

### STUDY ON ADMINISTRATION AND OPERATION OF THE BANKRUPTCY AND INSOLVENCY ACT AND THE COMPANIES' CREDITORS ARRANGEMENT ACT

#### FIFTEENTH REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE WITHDRAWN

**Hon. Richard H. Kroft:** Honourable senators, with leave of the Senate, I would ask permission to withdraw the fifteenth report of the Standing Senate Committee on Banking, Trade and Commerce, entitled "Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy Insolvency Act and the Companies' Creditors Arrangement Act," tabled in Senate on Tuesday, November 4, 2003, and replace it with a revised copy.

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

**Some Hon. Senators:** Agreed.

**An Hon. Senator:** Explanation.

**Senator Kroft:** This is a minor technical matter. Those senators who have no doubt already thoroughly absorbed the report know that it is 242 pages of complex material gathered over an extensive period of time. It has come to the attention of the committee that there were two errors. One error is that some academics who had presented a submission to the committee had inadvertently been omitted from the witness list. We take that seriously, particularly in view of the enormous time and trouble that these witnesses go to.

Second, on a more substantial matter, it has come to the attention of the Banking Committee that there is an error in the committee's discussion of the current treatment of Workers' Compensation Board claims on pages 139 through 143 of the report. We drafted this section of the report under the understanding that section 136(1) of the Bankruptcy and Insolvency Act provided for priority claims of all Workers' Compensation Boards that would rank after secured creditors but prior to unsecured creditors.

It has been drawn to our attention since the tabling of the report that this priority in fact existed before 1997 and ceased to exist under a twilight provision after that time. It was the intent of the committee that Workers' Compensation Board claims be treated as preferred claims, subsequent to those of secured creditors and in priority to the unsecured creditors under both the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act by virtue of another recommendation made to the committee.

Honourable senators, we are correcting language to be consistent with the recommendation that we have already made. It is just that the reference was to a clause that was not as we had referred. That is the complete extent of the changes involved in this withdrawal and resubmission.

I should add that the cost would be minimal in connection with this effort. It will be only those pages that were resubmitted, and the electronic transmission can be quickly accomplished as required. With respect, I would ask for the concurrence of the Senate.

**The Hon. the Speaker:** Is leave granted to accede to Honourable Senator Kroft's request?

**Hon. Senators:** Agreed.

[Later]

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

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

Motion agreed to.

[Translation]

## BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I ask for leave of the Senate to revert to Government Notices of Motions after the Orders of the Day, Inquiries and Motions, to discuss the adjournment motion.

[ Senator Kroft ]

[English]

**The Hon. the Speaker:** Honourable senators, is leave granted to revert to Government Notices of Motions immediately prior to the adjournment motion on our Order Paper?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Leave is refused.

**The Hon. the Speaker:** Leave is not granted.

• (0930)

## QUESTION PERIOD

### NATIONAL DEFENCE

#### PUBLIC ACCOUNTS—CONTRACT TO DESIGN NATIONAL DEFENCE LOGO

**Hon. J. Michael Forrestall:** Honourable senators, I have a brief question for the Leader of the Government in the Senate. Frankly, I hope it is not my last question to her. I hope the leader stays on and continues the fine work she has done over the last several years.

Honourable senators, the newly released Public Accounts reveal that in fiscal 2002-03, \$1.2 million was paid by the Department of National Defence to the firm Groupaction for professional and special services. Could the Leader of the Government advise the Senate whether this was for a contract to design a logo that was never used, or whether it was for something else?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I have no idea whether that amount of money was for the logo for the forces to which I assume the honourable senator is referring, which logo was then rejected.

As the honourable senator knows, many of the activities of that company are under investigation.

**Senator Forrestall:** Honourable senators, I was actually more concerned about the logo than the company.

Without getting into the details of the firm, could the Leader of the Government, either now or later, report back to the Senate on, first, what the contract or contracts were for; second, whether the contracts were put out to tender; and, third, whether the work was actually undertaken?

**Senator Carstairs:** I would be pleased to attempt to obtain those answers for the honourable senator.

## AGRICULTURE

### WESTERN CANADA—FARMING CRISIS— BOVINE SPONGIFORM ENCEPHALOPATHY

**Hon. Leonard J. Gustafson:** Honourable senators, I would be remiss if I did not ask a question about the very serious problems in the agriculture industry.

Yesterday, the Agriculture Committee heard from two farmers whom I know well. They made it very clear that the situation in agriculture is very difficult. Added to the existing problem of low prices, there is the current situation with cattle and so on. With the government in a state of flux, it seems to me that it may be spring before something positive can be done about these problems.

The Leader of the Government in the Senate has been very responsive to questions with regard to farm problems because, coming from Manitoba as she does, she understands them. Would she represent to cabinet, or wherever the power rests, the importance of taking action on this difficult situation before spring seeding?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. Of course I will continue to raise these concerns, as I have done on a nearly daily basis.

There is some good news, as the honourable senator knows, with respect to BSE. On October 31, the United States Department of Agriculture issued a draft regulation. They have called for a 60-day public comment period. It is to be hoped that by January 5, which I understand is the drop-dead date, they will have had the required commentary and will be able to open the border.

As the Honourable Senator Gustafson has clearly indicated, that, in and of itself, will solve the problems, not only for the beef industry but for other sectors as well. I can assure honourable senators that we will continue to work on these issues.

### WESTERN CANADA—FARMING CRISIS— GRAIN PRICES

**Hon. Leonard J. Gustafson:** The positive reports with regard to the possible opening of the border are very encouraging.

One of the most serious concerns in agriculture today is the very low grain prices. As an example, the price for durum wheat and hard wheat has dropped from approximately \$5 to approximately \$2.40 today. This creates a very serious problem for grain producers and the agricultural industry as a whole. Would the Leader of the Government raise that issue with the powers that be?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I will do so, and I ask the Honourable Senator Gustafson to do whatever he can to get Saskatchewan on board with respect to the Canadian Agricultural Income Stabilization Program, because currently Saskatchewan is presenting a significant hurdle to money moving from the federal government to the farmers who need it.

## FOREIGN AFFAIRS

### UNITED STATES—CANADIAN CITIZEN DEPORTED TO SYRIA—NEWS RELEASE—REQUEST FOR INQUIRY

**Hon. Marcel Prud'homme:** Honourable senators, in response to a senator who was unhappy about not having the opportunity to ask questions, Senator Christensen once said, "I will give you advice. The only way is persistence, my dear, persistence." Therefore, I will be persistent and return to an issue that refuses to die. As I predicted a year ago, it continues to grow, and we have to face it.

In news release No. 169, Mr. Graham, a highly competent minister, made a statement calling on Syria to investigate, et cetera. Why was a seminal statement of that kind not issued to the United States of America and Jordan? Jordan, after all, is supposed to be one of our closest friends. I will not say "ally," because that is something different, but it is a close friend in that vast region.

What happened in the United States is as unacceptable as what happened in Jordan, a country I like very much, as many people here know. Of course, what happened in Syria, if proven, is totally unacceptable. I have let Syrian people at the highest level know my views on this matter. I make no exception with regard to the treatment of Canadians.

I wish to know whether a news release similar to release No. 169 concerning Syria was issued to the United States in regard to Mr. Arar.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as soon as we learned that a Canadian citizen, Mr. Arar, had been sent from the United States to Syria via Jordan rather than being returned to his country, which is Canada, a protest was laid with the American government.

In just the last few days, Mr. Graham, our Minister of Foreign Affairs, spoke with Mr. Powell, because certain accusations have been made south of the border about information coming from Canadian authorities.

• (0940)

We can find no example of any such information having been given to the United States. We have asked them to look at their files and elucidate for us where they received that information and from what government official, if it was indeed a government official.

RUSSIA—RULE OF LAW AND DUE PROCESS—  
CONSTRUCTION OF CAUSEWAY—  
TERRITORIAL INTEGRITY OF UKRAINE

**Hon. A. Raynell Andreychuk:** Honourable senators, I wish to turn to two troubling issues that involve Russia. As we know, a high profile businessman has been charged. The entire community that has been following these events understands that if the rule of law were followed, the course of action taken by the government would put them well within its right.

In an interview yesterday, the ambassador from the United States indicated that quiet diplomacy is occurring to encourage Mr. Putin and the government to ensure that the rule of law, a fair trial and due process as known in Russia are followed in this case.

My first question to the Leader of the Government in the Senate is: What action is Canada taking, quietly or otherwise, to ensure and encourage that peace and stability are continued in Russia?

My second question relates to Russia having decided, single-handedly, to build a causeway from its Taman Peninsula to Ukraine's Tuzla Island. This unilateral course of action constitutes an attempt by Russia to take control of that region. Canada was the first Western country to recognize Ukraine's independence in 1991, within its current borders that include Tuzla Island. It is vital that these borders remain inviolable to ensure peace in the region.

What action has Canada taken to clearly express to Russia Canada's unqualified support for the territorial integrity of Ukraine, and what efforts is Canada making to attempt to have some peaceful resolution of this issue?

**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator asks the question with respect to Russia and the rule of law and due process. One must be careful when one interferes in the processes of other countries, particularly countries that we know are struggling with governance issues. Russia certainly qualifies as one of those.

I do not know of any action that the federal government has taken. I will certainly take from the statements of the honourable senator the fact that she thinks Canada should become involved, and I will bring her recommendation to the government's attention.

In terms of the situation with Ukraine, the statement from the United Nations that the territorial integrity of independent nations must always be protected is one to which we fully subscribe.

**Senator Andreychuk:** Honourable senators, it would not be an interference with the territorial sovereignty of Russia to continue

to support the rule of law there. In the recent past, we were openly encouraging Russia to continue to build the kinds of structures and institutions that support the rule of law. At this moment, when all eyes are on Russia and its absolute need to continue its economic and peaceful stability, some words of encouragement in line with what we have been doing would be the appropriate thing to do.

It is not the intention to undermine sovereignty, but to encourage the positive signs that have come out of Russia. They are now receiving investment and starting to trade, particularly in the oil sector, and that will bring positive results for the people of Russia. Quiet diplomacy in this case would be the way to go, but it should be conveyed at this point as opposed to a later point.

On the other point of the building of the causeway, this activity could cause eruptions as it involves Russia's territorial integrity. There will be environmental ramifications as well as political consequences. At this moment, with Canada's good offices in Ukraine and Russia, some words to encourage a peaceful resolution of this dispute would be in order.

We often wait too long. If we were to use our good offices of leadership, we might bring some levelling influence to this situation.

**Senator Carstairs:** The honourable senator is well recognized in the Department of Foreign Affairs and by the minister as someone with great knowledge of Ukraine. I know that when I bring forward her representations, those comments will be considered seriously.

In terms of the situation in Russia, the honourable senator is correct. For a number of years Canada has been engaged in funding governance structures and governance education. Clearly, it is important, if Russia is to maintain her international reputation, that she move forward in a spirit of acceptance of the rule of law and due process.

MALAYSIA—GOVERNMENT REACTION TO  
ANTI-SEMITIC COMMENTS OF MALAYSIAN  
PRIME MINISTER—MEETING WITH MALAYSIAN  
HIGH COMMISSIONER

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, some two weeks ago, the minister answered Senator Tkachuk's question and volunteered to find out who the Malaysian High Commissioner met in the Department of Foreign Affairs following the well-known inflammatory statements by the now retired Malaysian Prime Minister. Does the minister have that information and could she share it with us?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not have that information. I do not believe that there is a delayed answer available on that question. At least, one was not presented to me earlier this morning.

We have tried hard to get answers to questions as quickly as we can, and there are very few delayed answers, or indeed written questions, that have not been answered, but I do not have the answer to that one.



**Senator Lynch-Staunton:** I appreciate the problem of trying to get the department to cooperate and I admire the minister in the way that she has been able to accelerate the process. I commend her and her associate, the deputy leader.

To return to the question, will the minister tell us, now that Mr. Graham is back from abroad, whether he will call in the Malaysian High Commissioner and insist on passing on to him the government's reaction to those statements, because it would have more effect if it came from a senior member of the government rather than from an official, no matter how senior he or she may be.

**Senator Carstairs:** Honourable senators, I will be pleased to take the recommendation of the Honourable Leader of the Opposition to the Minister of Foreign Affairs.

[*Translation*]

## HERITAGE

### MILLENNIUM SCHOLARSHIP FOUNDATION— TRANSFER OF FUNDS TO PROVINCES

**Hon. Jean-Claude Rivest:** Honourable senators, you will undoubtedly recall that, when we were considering the Millennium Scholarship Program, I and several other honourable senators were opposed to this federal government initiative. We stated that it would have been preferable for the federal government to include this program in social transfers and make the funds available to each of Canada's provinces. That would have enabled the provincial governments, who have exclusive jurisdiction over education, to develop a system of assistance and grants for students in their provinces, reflecting the particular realities of each region in Canada.

This week, a report was published evaluating the Millennium Scholarships, after three or four years of operation. One of the conclusions of the report is that, despite the considerable amount of money invested by the federal government in the program, the effectiveness of the program is highly debatable. The federal funds have simply replaced existing provincial programs, and created a probably useless bureaucracy at the federal level.

• (1950)

Could the minister make her colleagues in government aware of the possibility of abandoning the Millennium Scholarship Program and transferring the federal money available directly to the provinces, which have exclusive jurisdiction over education, so that each province can provide its students with the assistance they require to complete their university studies?

[*English*]

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, 85,000-plus students have received millennium

scholarships. If the honourable senator were to ask those 85,000 students whether they thought this program was a good idea, they would respond with a resounding yes.

**Hon. A. Raynell Andreychuk:** Honourable senators, this scholarship fund was set up to improve access to education. There is no doubt that those students who received financing under the millennium scholarship program have benefited. As well, there is no doubt they think it was a good idea.

The report really goes to the heart of what the government was trying to do. It stated that the intent of the program was to enhance access to colleges and universities by offering federal scholarships. Its real aim was access to education and reduction of student debt load.

The analysis done of the program by some eminent scholars who follow Canadian education, and access to it, pointed out that the foundation was administered privately and that there were hastily signed contracts with each province, allowing the diversion of federal dollars into provincial coffers instead of into enhancing financial aid packages for students. The report also goes on to state that there was no oversight and analysis concerning the accountability of the monies.

It seems to me there needs to be some reassessment because that amount of money should not be displaced by provinces, or otherwise, from existing applicants. The aim was to try to widen the pool of students who would have access to education in Canada. As we know, productivity and competitiveness rest on the ingenuity and training of young people.

While the millennium fund has had a role to play in education, it is not the one that was intended by the legislation, and it has not increased access.

Will the government look at the modality of delivering this amount of money to increase Canadians' access to higher education?

**Senator Carstairs:** Honourable senators, there is a certain amount of conflict between the position taken by the Honourable Senator Andreychuk and the position taken by the Honourable Senator Rivest.

Like Senator Andreychuk, I agree that it should improve access. However, I also agree with Senator Rivest that if provinces take this money and choose not to make it available for greater access, then there is limited effort in which the federal government can engage. After all, education is the primary responsibility of the federal government. While there is a tradition in this country of funding universities through chairs, research dollars and other sources of income, when provinces choose to take money from funds provided by the federal government and divert them elsewhere, what the province can do is limited.

I find the same difficulty with respect to the Child Tax Benefit. As the honourable senator knows, in most cases welfare recipients in this country do not receive that benefit because it is clawed back by the provinces.

**Senator Andreychuk:** Honourable senators, I make the point that federal funds were clawed back originally from provinces. Therefore, we cannot put the entire blame on them. This was new money. It was put in to access to education. I do not think you can then say that the provinces are shortchanging anyone. The provinces are exercising their discretion.

I would ask the government to look at ways and means to improve access to education because, clearly, the provinces need more money for education.

**Senator Carstairs:** Honourable senators, education is a responsibility of the provinces. They must fund education. According to the report, whose analysis the honourable senator has mentioned this morning, these are additional dollars for education which some provinces did not spend on providing greater access.

[*Translation*]

**Hon. Gérald-A. Beaudoin:** Honourable senators, scholarships are awarded in the provinces because of the federal spending power.

Jurisprudence from the Supreme Court of Canada and other courts says that we are not to interfere in provincial jurisdictions. I am in favour of the spending power; I am not challenging it. I think this power is necessary, because some provinces are richer than others and, in this country, we are supposed to have equal opportunities. That does not mean that there will not be variations from one province to another.

I remember the days when federal support for universities was being discussed. Quebec refused any funding. At the time, the universities had told Premier Maurice Duplessis that this made no sense and that there should be federal funding for universities. We eventually developed a very good system.

I fail to see why we cannot do the same thing with the millennium scholarships. The Leader of the Government said that 85 per cent of students are very pleased. Great! That comes as no a surprise to me. I have been teaching in university for years, and our students need these scholarships. We could allow variations from one province to the next, not on the amount — we will not touch that — but on the approach.

We had come up with a special system for Quebec, which was being treated like any other province, but not necessarily with the same approach.

[*English*]

**Senator Carstairs:** Honourable senators, that is exactly what the federal government did. It negotiated variable agreements with every single province. The agreements signed by the provinces with respect to the millennium scholarships are not identical. The monies going to the provinces are identical, but the agreements that have been signed are not.

In some instances, this has allowed some provinces to take money from their education-financing envelope and replace it with these dollars the federal government provided to them. This has meant that, in some places, there has not been the same equity in the number of scholarships offered. From the federal government's point of view, there has been equality in terms of the monies given.

[*Translation*]

**Senator Beaudoin:** I think this is very good, but I am a little more ambitious. If we are able to achieve 85 per cent satisfaction, why not aim for 90 or 95 per cent? Entering into agreements that may vary from one province to the next is already a step in the right direction. I agree and I applaud that.

[*English*]

**Senator Carstairs:** Honourable senators, I did not mention a percentage factor at all. What I stated was that 85,000-plus students have received millennium scholarships.

[*Translation*]

**Senator Rivest:** I would have preferred to see federal funds for education go directly to the provinces. I understand that the Government of Quebec has concluded an agreement with the federal government on the millennium scholarships.

Students in Quebec have the lightest debt load in Canada because of the freeze on tuition fees. However, the financial situation of students is not a priority of the Government of Quebec.

• (1000)

Though though this is a major problem in Quebec as well, it is not a priority. The academic community in Quebec feels that, if the Canadian government has funds available for education, it needs to transfer them to the provincial governments, because it is exclusively their responsibility. Provincial governments can then allocate these funds in keeping with their general responsibilities and their priorities for education, which no doubt include a student aid program. This is why implementation of the Millennium Scholarship Program has created problems in Quebec, where this is not a priority, unlike other Canadian provinces or regions.

[*English*]

**Senator Carstairs:** Honourable senators, as a former educator, I think that Quebec has done an incredible job in keeping the tuition fees at its universities at the lowest level in this country. That has, in and of itself, provided great accessibility to the young people of your province.

However, the circumstances are not the same right across this nation. There have been circumstances in the past — not for Quebec, though; let me be clear about that — in which agreements signed with the provinces for monies to be transferred there resulted in a complete withdrawal by the provinces from the education field, particularly with respect to post-secondary education.

I think it is fair to say that young people in this country want to know that when dollars are earmarked for education, they are, in fact, spent for that purpose. I think an interesting debate in that respect will need to take place with the provinces within the next short period of time. Now that we have separated out the health portion of the transfer to the provinces, the question for discussion will be whether we should also look to separate out the education portion so that the same kind of clear accountability can be shown.

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## ORDERS OF THE DAY

### INCOME TAX ACT

#### BILL TO AMEND—THIRD READING

**Hon. Wilfred P. Moore** moved the third reading of Bill C-48, to amend the Income Tax Act (natural resources).

He said: Honourable senators, it is my pleasure to speak today on the third reading of Bill C-48, to amend the Income Tax Act with respect to natural resource taxation. This bill introduces changes to the federal income tax structure for Canada's mining and oil and gas industries. Following extensive consultation with all parts of the resource industry, the government announced its intention to change the tax structure for the resource industry in the February 18, 2003 Budget. That announcement was followed by the release of a technical paper for public comment in March. A further series of consultations was subsequently held with interested industry groups across Canada.

The 2003 Budget also announced other initiatives that impact on this sector and which complement these changes. Several of those measures were included in Bill C-28, the Budget Implementation Act 2003, which we debated earlier this year. Those changes included eliminating the federal capital tax over five years, increasing the amount of annual income held eligible for the federal small business tax rate to \$300,000 from \$200,000, and extending the temporary 15 per cent mineral exploration tax credit until the end of the year 2004.

The bill we are debating today ensures that the resource sector will benefit from a new tax structure. These new measures reflect the government's belief in the importance of the resource sector. In 2001, for example, the sector accounted for almost 4 per cent

of Canada's GDP. As well, over 170,000 Canadians currently work in resource businesses. These new measures also reflect the government's ongoing commitment to an efficient and competitive corporate income tax system.

Honourable senators, I would now like to provide a brief overview of the key elements in Bill C-48.

The first measure ensures that resource sector firms are subject to the same statutory rate of corporate income tax as firms in other sectors. When the government reduced the general corporate income tax rate from 28 to 21 per cent under the five-year tax-reduction plan, the lower rate did not apply to resource income. Now, through Bill C-48, the federal corporate income tax rate on income earned from resource activities will be reduced from 28 to 21 per cent by the year 2007. The statutory rate is often the first piece of information viewed by prospective investors. If Canada is to send a positive message to investors that it is competitive, then this uniform lower rate is essential.

A second measure concerns the 25 per cent resource allowance. The resource allowance was originally introduced in 1976 to protect the federal income tax base from rapidly increasing royalties and mining taxes. While it places a ceiling on deductions, it often distorts economic signals. In some cases, the resource allowance may result in a bias against investment in more valuable resources which are more likely to yield a higher royalty return. In other cases, it provides a deduction greater than royalties and mining taxes actually paid. The complexity of the resource allowance calculation has also resulted in substantial compliance costs for industry and substantive costs for government.

As my colleagues are aware, economic conditions have changed significantly since the 1970s. In today's economic environment, there is greater pressure on producers to be efficient, and on host jurisdictions to levy royalties at competitive rates. As a result, Bill C-48 eliminates a resource allowance and provides a deduction for the actual amount of provincial and other Crown royalties and mining taxes paid. In 2007, once these measures are fully phased-in, they will level the playing field and place all projects on an equal footing. Companies will get a deduction for actual royalties paid, irrespective of whether they are paid to the Crown or to non-crown rights-holders.

The measures do not alter the treatment of royalties paid to First Nations and other private resource owners, which will continue to be deductible. The consistent treatment of all royalties will reduce distortions by removing any tax advantage for companies paying royalties to non-Crown landowners.

• (1010)

Honourable senators, the two measures I have just described will result in a tax structure that imposes the same corporate tax rate on resource income as on other corporate income and a consistent treatment of expenses between resource projects and the resource sector and other sectors of the economy.

A third measure in Bill C-48 introduces a new 10 per cent mineral exploration tax credit. Corporations incurring qualifying mineral exploration and development expenses before a mine reaches production in reasonable commercial quantities will be eligible for this new tax credit.

Honourable senators, some people have questioned whether the measures in this bill are consistent with Canada's Kyoto commitment to reduce greenhouse gas emissions. They are completely consistent. The uniform tax rate and more consistent treatment of expenses will mean that investment will be allocated more consistently with underlying economic factors. In implementing Canada's Kyoto commitment, the oil and gas and mining sectors will be called on to make a significant contribution to a 55-megaton reduction in greenhouse gas emissions through the large industrial emitters program. Renewable energy initiatives are also a key part of the government's Kyoto response. Budget 2003, for example, allocated an additional \$2 billion over five years to support alternative energy technologies that help reduce greenhouse gas emissions. It also supported renewable energy through tax measures, an excise tax exemption for certain alternative fuels and provision of accelerated tax depreciation for additional types of renewable energy and energy-efficient equipment.

Bill C-48 also includes a measure that will enhance the treatment of investments in renewable energy and energy conservation projects. Corporations will now be allowed to renounce Canadian renewable and conservation expenses to flow-through share investors in a year where the Canadian renewable and conservation expenses will be incurred the following year. This measure will provide greater flexibility in the timing of investments financed using flow-through shares. The treatment of flow-through shares investments in these projects will now parallel similar investments in non-renewable energy projects.

Honourable senators, as I indicated above, this new package is a product of extensive consultations with all parts of the resource sector. Overall, the changes will be positive for both the mining industry and the oil and gas industry. Cumulatively, these measures will substantially reduce effective tax rates for both industries. For oil and gas, this change reverses a current disadvantage relative to the United States of America. For mining, it builds on an existing advantage. In both cases, the changes place the Canadian resource sector in a markedly improved position to attract capital for exploration and development.

In summary, honourable senators, let me say that this new regime meets the three goals established by the government when it was developing a tax structure for the resource sector. First, the tax regime will be internationally competitive, particularly in North America. Second, the new regime will be transparent for firms and investors. Third, the new regime will promote the efficient allocation of investment, both within the resource sector

and among sectors of the Canadian economy. These changes will take effect from January 2003 and will build upon a Canadian tax advantage to support investment, innovation, productivity, economic growth and jobs for Canadians.

In closing, I thank all members of the Standing Senate Committee on Banking, Trade and Commerce, particularly Senator Kelleher, for their work in analyzing this bill and for the recognition of the benefits of this bill for our natural resource industries. I ask and encourage all honourable senators to give their support to Bill C-48.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I thank Senator Moore for his insightful presentation. The bill does have our support in terms of its thrust. A number of issues were well-canvassed by our colleagues in the committee. As indicated, there was support there for reducing the tax burden on the resource sector.

It is important to place on the record the fact that, between the federal and provincial governments, governments in Canada are collecting almost \$6 billion each year in taxes and royalties from the oil and gas sector, plus several hundred millions of dollars more from the mining sector. By any measure, those sectors are major contributors to the consolidated revenue and the kinds of social programs and other programs that are delivered by governments. In many ways, we owe a great deal to those important sectors of our economy.

I simply want to place on the record some aspects of the process behind this change that have raised some questions.

During the hearings of the Banking Committee, we heard testimony from representatives of Aboriginal Canadians, particularly in Western Canada, who outlined their concerns about this change in the tax treatment. It would appear that a side effect of the legislation, which aims to reduce the corporate tax rate while eliminating the resource allowance, will be to make resource extraction on reserve land less advantageous than it was previously.

While this impact on First Nation is clearly not the primary intent of the new tax regime, it looks as if it may be one of the effects or unintended results. We can debate whether they are losing an advantage or whether the amendments will just level the playing field, and we can debate whether or not this should matter, but we will set that aside. Instead, I should like to shed a little light on the process leading up to the bill reaching the Senate, going through the important study that it went through in our committee, and being now before us at third reading.

In committee, our colleagues heard the testimony from one witness, Mr. Roy Fox, who is President of the Indian Resource Council of Canada, and Ms. Marilyn Buffalo, representing the Samson Cree nation. Their focus was on the failure of the government to either consult with them or even inform them that this legislation was coming.

The committee was told that these persons wrote to the Minister of Finance in June last, and that the Minister of Finance did not reply. We understood that they asked to appear before the Finance Committee in the other place and, once again, did not get a hearing in the other place.

Mr. Fox told our committee:

Mr. Chairman, we requested to be included in the process through the House of Commons. We were not allowed to make a presentation to that standing committee when it was interviewing witnesses.

Senator Tkachuk asked:

To clarify, you wrote a letter requesting to appear and the chairman or somebody told you that you could not appear or were not to appear?

• (1020)

The record from our committee indicates that Mr. Fox replied:

We were told that we were too late. This was after we had been in touch with these offices well before — after the second reading.

The committee was also told that these witnesses had written a letter to the Minister of Finance in June, pointing out their concerns. The record of our Banking Committee indicates Mr. Fox stating to our colleagues:

While there appears to have been extensive consultation with the resource industry, including the Canadian Association of Petroleum Producers, regarding the proposed amendments, there has been no consultation with those who will likely be impacted the most, namely First Nations.

The IRC —

That is the Indian Resource Council. Mr. Fox continued:

— wrote to the Minister of Finance on June 17, 2003, expressing our concerns with the proposed Bill C-48, especially as it pertains to the resource allowance, and requested a delay until First Nations were fully consulted. Although our correspondence has not been responded to, we understand that copies of the letter have been circulated to appropriate committee members in both the House of Commons and the Senate.

Later, in response to a question about whether there had been any attempt to follow-up on this letter, Mr. Fox told our colleagues on the Banking Committee:

We followed up the initial correspondence with phone calls and e-mails. There has been some response through e-mail, but not to the particulars of that piece of correspondence.

Mr. Fox went on to give our committee this explanation as to the effects of the legislation on First Nations:

Historically, companies operating on Indian lands have been able to deduct against income the 25 per cent resource allowance, plus royalties paid on First Nations production. Royalties paid on provincial Crown lands have not been deductible against income. This means that industry has been able to achieve higher after-tax cash flows on Indian lands than on provincial lands. These after-tax cash flows have been used to offset the additional costs of doing business on Indian lands. These additional costs arise from the need to negotiate economic and social benefits with First Nations, collaborating with First Nations on training and employment opportunities, and contributing towards community economic and social development. In other words, the resource allowance and the deductibility of royalties have provided industry with an added incentive to operate on Indian lands.

It was also pointed out that the *Victor Buffalo* case, which is before the courts in Calgary, could affect this legislation as issues in that case pertain to oil and gas.

Honourable senators, our Banking Committee, to its credit, was the first and only government institution to give this community or these individuals a hearing. I think it is important to underscore that and place it on the record because it proves, once again, that in the examination of legislation, we do make available to Canadians who have an interest in public legislation an opportunity that they might not have been given in earlier review — as in this case. They felt when they testified to this effect that they did not get a response from the ministry. They did not have an opportunity with the committee in the other place, but they did have that opportunity here, and I salute my colleagues on the Standing Senate Committee on Banking, Trade and Commerce.

After weighing the pros and cons of delay, we may not have given them the results that they wanted, but we did, through our colleagues in the Senate Banking Committee, at least provide a hearing. The senators did call back representatives of the government for further explanation. If nothing else, the First Nations' testimony before the Banking Committee of the Senate, and the concern expressed by some members of the committee, did receive attention.

I gather that the minister and his officials thought that the bill would be dealt with in one meeting, not two. There seemed to be some nervous faces from the Department of Finance, I am told, at the end of the first meeting of our Banking Committee. They were nervous, no doubt, not only because of the testimony, but also because of the obvious discomfort of some members of the committee.

I note that, within a few days of the committee meeting, the Minister of Finance suddenly replied to that June letter. Through June, July, August, September and October, there had been no response. Once the matter was raised in committee, suddenly the minister responds. Bravo to the members of the Banking Committee.

I point out that the minister's letter outlines the reasons for the policy change, points to the strong support of the industry, says that he appreciates their concern and then states that he has instructed his officials to engage in discussions with the Indian Resource Council of Canada at their convenience. Obviously, for First Nations people who have a serious concern, there is no leverage after the bill is made law. Therefore, those discussions should have been held before the bill was introduced.

Let me conclude by saying that this is a good example of the second chamber playing a fulfilling role — stakeholders who have not had the opportunity to be heard receiving that opportunity. As a result, we end up enacting better legislation because our system is bicameral.

**Hon. Charlie Watt:** Honourable senators, I wonder if Honourable Senator Kinsella would accept a question?

**Senator Kinsella:** Yes.

**Senator Watt:** Honourable senators, I have not clearly examined whether this particular bill would have an implication on the First Nations. Listening to the argument put forward by Senator Kinsella, I am led to believe that not only were they not informed but also it seems that they were denied access to make their case in the committee. Is that what you are saying, Senator Kinsella?

**Senator Kinsella:** I am saying, honourable senators, that, in the development of this government legislation, a community concerned with a particular sector of the economy attempted to have a dialogue with the ministry and was ignored. A bill was introduced, examined in the other place and went to committee in the other place. This community, which has a valid set of interests precisely on the matter that was contained in the bill, sought to be heard but was not successful in being heard in the other place.

The good news is that, because we have an upper chamber that does review legislation and does go through the three steps, including study in committee, we were attentive to this lacuna and provided an opportunity for these important witnesses to be heard and to express their view. I think the bill should be adopted at third reading.

• (1030)

I want to place on the record, however, that honourable senators on the Standing Senate Committee on Banking, Trade and Commerce did the right thing. We should always learn from

[ Senator Kinsella ]

everything we do. I would hope that in the future, when proposed legislation is first brought forward, there would be the kind of consultation that is becoming more and more the way of conducting public business in Canada, particularly as it affects First Nations. In respect of the legislative process, I think that honourable senators set a good example.

[*Translation*]

**Hon. Aurélien Gill:** Honourable senators, I would also like to congratulate the members of the Standing Senate Committee on Banking, Trade and Commerce for their sensitivity and respect toward the representatives of the first nations, and all the senators who have become aware of the Aboriginals' situation. Senators are increasingly aware of the situation in the first nations and respect them all the more.

To date, there has been some neglect since the arrival of the Europeans. Nonetheless, exceptional efforts are being made in this chamber to make up for lost time. We must recognize this and, in particular, congratulate those who have become personally involved.

Work in raising awareness has to begin in the other place. Unfortunately, the lack of awareness in the other place is such that most of the legislation on Aboriginals ends up being challenged before the courts. Some people are not doing their job.

Our communities need infrastructure. If restrictions are imposed and obstacles raised for the few economic activities that exist in Aboriginal communities, then to whom do you expect them to turn if they want to get out of this mess one day? It is time to open up opportunities for Aboriginals with respect to economic development.

Once again, I would like to thank the honourable senators for their kindness toward and respect for Aboriginals.

[*English*]

**Senator Moore:** Honourable senators, I would like to put a couple of things on the record in respect of the intervention of Senator Kinsella and the concerns expressed by Senators Watt and Gill.

Regarding the request to appear before the committee in the other place, we were told on Wednesday, November 5, in the hearings of the Standing Senate Committee on Banking, Trade and Commerce, that that request was made after those hearings concluded. It was not the case that the hearings were in session when they asked to appear but were denied the opportunity. They made the request; and we were told that in evidence last Wednesday.

With regard to the consultation process, the department did conduct a series of open public meetings across the country for all interested parties — native and non-native. I am confident that the Indian Resource Council of Canada was aware of what was happening because, on October 8, 2003, we heard in evidence that they passed a resolution of the council to make an intervention to the Banking Committee.

I will clarify the matter: This element has caught the attention of honourable senators in respect of native lands. I do not want Bill C-48 to be characterized as targeting native lands that may hold resources of value. The bill applies to all non-Crown landholders, native or non-native. Last week, with respect to the *Victor Buffalo* case, we heard from legal counsel for the Department of Finance in committee. Ms. Levonian told the committee that Bill C-48 does not impact on that case.

**Hon. Marcel Prud'homme:** Honourable senators, I attended the meeting under the chairmanship of Senator Kroft. I accept the remark of Senator Gill, “la gentillesse,” but as for the competence, I will explain.

The fact remains that representatives of the IRC wanted to be heard by the House of Commons committee. The Honourable Senator Moore said that they might have put their request too late. They were unhappy and showed their displeasure. I believe that I attended those two meetings, and I recall information about a letter that was written by the Indian Resource Council to Mr. Manley on June 17, 2003, to which they never received a reply.

It was only after we heard from the IRC witness, Mr. Roy Fox, President of the IRC, at the November 7 meeting chaired by the Honourable Senator Kroft, that the group received a reply. They received two letters in reply: one dated November 3 and one dated November 4. It took that long for the minister to acknowledge their letter of June 17.

I sat in the other place under Mr. Pearson and under Mr. Trudeau. At that time, if someone stood in caucus and said they had written to the minister on June 17 and had still not received a reply by November 3, the prime minister would have said, “I am sure that this afternoon you will likely receive a reply.” — and, indeed, a reply would be received.

I do not understand the breakdown that happened between June 17 and November 3. Again, when you attack an issue head-on, you are more likely to cut your losses from the beginning. If you know that the displeasure will grow, then face it head-on at the outset.

The witnesses from the Indian Resource Council were unhappy, but at least they were heard by honourable senators at the Banking Committee. I urge honourable senators, and especially the newer senators, to try to remember that people do not expect to win all the time. The frustration lies in not being heard.

• (1040)

I want to thank the chairman, the Honourable Senators Moore and Tkachuk, and those on the committee for making room for these people who wanted to be heard. They are not yet totally happy. They still feel that something is wrong. That which is wrong, as our chairman said, could still be corrected in the future.

I look at him. I do not think I am misinterpreting what happened. If there were any wrong done to some people, it could be corrected in the future. That is the best answer that the Senate committee can offer to your attention for quick approval.

I repeat again and again: Canadians do not expect to win on all of the issues all of the time. However, they feel extremely frustrated when they are not heard, especially the First Nations, who are more sensitive. I know that Aboriginal representatives hit a nerve with many parliamentarians. I always call a spade a spade, but they demand a little bit more patience and understanding.

Honourable senators, I was glad to sit on this committee. I am pleased by the good words of Senator Gill who said that at least they were heard in the Senate. That is exactly why the Senate exists. More and more, we will have to say to Canadians that they have a tendency to go very fast in the other chamber.

I met a very prominent minister last night in the dining room. His pleasure was to say to everyone around that he had sent 17 bills to us in the last few weeks. It will be tough luck some day. We need to find one who can express himself or herself well in English or French to appear on television and explain the system. Seventeen bills were dumped on us at the last minute! He expects them all to be passed?

That is similar to the practice in the National Assembly in Quebec. They wait until December 20 to deal with some matters, and they make people sit all night. The spirit is there, as is the other spirit. Bills get lost and bills get passed without time to study them. It frustrates people who are not heard.

The role of the Senate was appreciated, even though the Aboriginals are not totally happy. The topic is still controversial. People are upset with Minister Nault. They did not get replies to their letters. It is unbelievable. If we were to do that, even with the limited staff that we have, we would be criticized.

I do not answer people by writing. I call. It is easier, faster and more precise.

Honourable senators, I will vote for this bill as soon as my chairman stands to speak. I can see now that he is building toward that and is wondering whether I will ever shut up so that he can move passage of that bill. He is too much of a gentleman to say that, but I feel that it might be coming soon.

I am glad to have been part of this study and of giving a chance for these people to be heard.

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

**The Hon. the Speaker:** Is the house ready for the question? I will put the question.

It was moved by the Honourable Senator Moore, seconded by the Honourable Senator Kroft, that the bill be read the third time now.

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

**Hon. Senators:** Agreed.

Motion agreed to and bill read third time and passed.

### PRIVACY COMMISSIONER

#### MOTION TO APPROVE APPOINTMENT— REFERRED TO COMMITTEE OF THE WHOLE

**Hon. Sharon Carstairs (Leader of the Government),** pursuant to notice of November 6, 2003, moved:

That, in accordance with Section 53(1) of the Act to extend the present laws of Canada that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves, Chapter P-21 of the Revised Statutes of Canada 1985, the Senate approve the appointment of Jennifer Stoddart of Westmount, Quebec, as Privacy Commissioner for a term of seven years.

**Hon. Marcel Prud'homme:** Honourable senators, there is a mistake in the address. It should be Jennifer Stoddart of Montreal, Quebec.

**The Hon. the Speaker:** I take that as a point of order. My response as presiding officer is that the error is of such a nature that it can be addressed in committee. I understand this matter will be referred to committee.

**Senator Carstairs:** Honourable senators, Ms. Stoddart has been nominated to succeed Mr. Robert Marleau, whose term as Interim Privacy Commissioner expires on January 1, 2004. The Privacy Commissioner is an officer of Parliament who monitors the federal government's collection, use and disclosure of its clients' and employees' personal information and its handling of individuals' requests to see their records.

The commissioner has broad powers to investigate complaints received from individuals under the Privacy Act and the Personal Information Protection and Electronic Documents Act. The powers of the Privacy Commissioner include the investigation of complaints, the conduct of audits under two federal laws, the publication of information on personal information handling practices in the public and private sector, the conduct of research into privacy issues, and the promotion of awareness and understanding of privacy issues by the Canadian public.

Ms. Stoddart is currently President of the Commission d'accès à l'information du Québec, a position that she has held since July of 2000. She also has experience in positions of increasing responsibility with the governments of Canada and Quebec. Prior to her current government appointment, she served as Vice-President of the Commission des droits de la personne et des droits de la jeunesse du Québec.

• (1050)

In brief, Ms. Stoddart brings with her an excellent reputation for taking into account various perspectives in arriving at her decisions and future directions. I believe she will make a significant contribution and continue the important work started by Mr. Marleau and the government to rebuild the Office of the Privacy Commissioner. I trust that all honourable senators will join me in supporting this proposed appointment.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I want to say again that I do not like the way the government is handling its business. We were told at the last minute last night and gave leave for a notice of motion, and now we are rushed into judgment on the candidate. The matter of her qualifications is beside the point. We are being rushed into a decision. Why does this need to be done on a Friday, or even next week? Why are we not told that the calendar has been changed? Until that is done, I will continue to protest the way things are being handled here.

That being said, we usually go into Committee of the Whole to receive and have an exchange with officers of Parliament, and I hope that that can be arranged. However, before that is done, perhaps we could have some written information on the candidate. We have nothing but a name and the summary that the Leader of the Government has given us. We must have something tangible in front of us to review, and at the moment we are acting too hastily. I do not understand, and I wish the truth would finally come out.

**Senator Carstairs:** Honourable senators, it would be this government's position that we would indeed move to Committee of the Whole. I have requested more detailed information on Ms. Stoddart, which I hope to be able to distribute to honourable senators quickly. It would seem appropriate not to go into Committee of the Whole until after we have completed Royal Assent this afternoon.

**Senator Lynch-Staunton:** I expect that the minimum amount of information we will get will include the act under which she operates. This is an office that, unfortunately, has been terribly soiled and affected, and the morale there is at an all-time low. The proposed appointee has more to do than just protect privacy; she must show that she has the administrative skills to bring this office back to the level of efficiency that the last few months have, unfortunately, dissipated.

I wish to give credit to Mr. Marleau for all his efforts, and we owe him a deep debt of gratitude for taking on that job.



**Senator Carstairs:** I thank the honourable senator for his comments. I will ask for copies, for all senators, of the act under which the proposed Privacy Commissioner finds her duties and responsibilities.

**Hon. A. Raynell Andreychuk:** Honourable senators, I wish to voice my objections to the process. We will be going into exactly the same process that led to the appointment of Mr. Radwanski. In light of the Prime Minister's comments that it was our appointment and only his recommendation, and despite the fine credentials that this applicant has and the support that this person should receive from us, the process is so flawed that I do not believe we would be discharging our duties by continuing the same process that leads us to accept someone by a short Committee of the Whole and an observation of that person, if they were to attend here.

It is time we revised our processes and did our job properly. We have as much to account for what went wrong in the Radwanski matter as anyone else. As I pointed out, because the Prime Minister recommended Mr. Radwanski and because he recommended himself to us by saying that he would undertake his duties efficiently and manage appropriately, with no other evidence, we supported the Prime Minister. That is not sufficient in this day and age, and I for one do not believe it is appropriate to appoint someone in this process.

At best, I would abstain, if not oppose, the process.

**Senator Prud'homme:** Honourable senators will remember that when Mr. Radwanski appeared here, it was very embarrassing, but I thought it was my duty to do what I did. I do not like rubber-stamping what is expected from the Senate. With all due respect to the process, it was very difficult. I demanded and obtained a vote.

I do not like to kick someone when they are down; I am a better fighter than that, so I will not say anything else about the fact that I was proven right. The vote took place, however, and many members felt so strongly about the views expressed by some that they saw fit to leave. More than 40 said yes, but 11 did not, and they were a mixed bag of Liberals, Conservatives and independents. Since Mr. Marleau did not want to be renewed on an interim basis, I would have felt much more at ease if we had been offered an interim commissioner until we had time to go through the same process that we did with Mr. Radwanski.

My question is to Senator Carstairs: Was this motion put to the other chamber in the same manner? Was it discussed, debated, sent to Committee of the Whole or a special committee, or was it just plain rubber-stamped by the government saying that they were pleased to announce that we had a new commissioner for seven years, with no scrutiny? This motion was sent to us close to midnight last night. Senator Robichaud advised us that today it would be on the Order Paper. If you refer to the Orders of the Day, it is No. 3, under Motions.

I do not know how long we will have to debate the issue raised by Honourable Senator Andreychuk. The usual request by Honourable Senator Kinsella is that this officer come here, as we have done for Mr. Phillips, twice, I believe, and for Mr. Radwanski. I say for the second time today that that is the Senate at its best. It is not like the House of Commons, which is informed and applauds and that is the end of the matter. If they had done their duty some time ago, we would not have had the unfortunate incident of forcing a vote here — that has never been done — and seeing results at the end of the day that decide for everyone, including Mr. Radwanski himself. Now that he is down, I will not fight him any further.

We do not know if we will be adjourning. We are like a bunch of kids who are told that if they behave, they will be allowed to go home. Is it possible to know if the process will take place here? I would like a degree of consultation from this officer. I see there is an exchange of paper now.

I would like to know, from either Senator Robichaud or Senator Carstairs, how the process developed in the other chamber. Was there debate on the floor, was there a committee, or was it just an announcement?

**Senator Carstairs:** If you are asking me a question, then I defer to the Speaker.

• (1100)

The process in the other House involved Ms. Stoddart's appearance before the Operations Committee. The Operations Committee, a new committee in that place, is the committee that investigated Mr. Radwanski. That committee met with Ms. Stoddart earlier this week and made a recommendation to the House of Commons that it accept her nomination. A vote on that matter was taken in the House of Commons yesterday, which is why I could not give you notice prior to that. Our process is that they approve, and then we seek to approve.

**Senator Andreychuk:** Honourable senators, is it correct that the House of Commons has set up a procedure to analyze the application, compare it to the expectations of the job and then recommend to the other House? Will we receive evidence that there has been scrutiny done in the other place of the candidate's qualifications for the position?

**Senator Carstairs:** Honourable senators, I can attempt to get for you the transcript of that committee. However, the process is not quite as Senator Andreychuk has identified. The process is that the nomination was put before the House of Commons in exactly the same way as the nomination is being put forward in this chamber. My recommendation will be that we deal with it in Committee of the Whole. Their recommendation was that it be referred to the Operations Committee. Ms. Stoddart appeared as a witness before that committee.

The opposition leadership has asked me for copies of the Privacy Act, which are now being prepared for all honourable senators so that they can, if they wish, examine the duties as set out in that act. Obviously, the Operations Committee would have no right to ask about duties beyond the scope of the Privacy Act.

In terms of the qualifications of the individual for the position, I understand that that was the subject of discussions with Ms. Stoddart, and I assume it would also be the subject of our discussions.

If we do not establish a new committee, and I certainly do not think we need any more committees, I believe that the National Finance Committee should take on the role of ongoing monitoring of officers of Parliament, although it makes perfect sense to me that the Commissioner of Official Languages should report to the Official Languages Committee. In fact, that is where she goes on a regular basis to make her reports. However, for financial scrutiny and that type of thing, I would like our National Finance Committee to take on a greater role.

Honourable senators, I cannot make that decision. The Senate would have to decide, through our rules, that the National Finance Committee should take on this mandate in addition to what is presently called for in our rules for that committee. I do not think its current mandate would prohibit that committee from doing this, but I think it would give it more force and effect if we expanded the mandate to include this.

[Translation]

REFERRED TO COMMITTEE OF THE WHOLE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I move:

That the motion not now be adopted but referred to Committee of the Whole later this day.

[English]

**Hon. Marcel Prud'homme:** Honourable senators, I could not sleep last night, so I had a look at what happened in the House of Commons yesterday. Before we deal with this matter this afternoon, it might be helpful to read the discussion reported at page 9237 in *Debates of the House of Commons* at eleven o'clock yesterday. It reads:

**Hon. Don Boudria (Minister of State and Leader of the Government in the House of Commons, Lib.):** Mr. Speaker, there have been consultations among all parties in the House and pursuant to the agreement that was made, I think you would find unanimous consent for the following motion. I move:

That Motion No. 134, standing in my name on the Order Paper, is now moved and adopted unanimously.

[ Senator Carstairs ]

The motion reads:

That, in accordance with subsection 53(1) of the Act to extend the present laws of Canada that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves, Chapter P-21 of the Revised Statutes of Canada, 1985, this House approve the appointment of Jennifer Stoddart of Westmount, Quebec as Privacy Commissioner for a term of seven years.

[Translation]

**The Acting Speaker (Mr. Bélair):** Is there unanimous consent to move the motion?

**Some hon. members:** Agreed.

(Motion agreed to)

With that, honourable senators, the House of Commons makes Ms. Stoddart an officer of Parliament for seven years.

**Hon. Sharon Carstairs (Leader of the Government):** With the greatest respect, honourable senators, I do not think that is fair to the Operations Committee of the House of Commons. All members of the House of Commons are represented on that committee. Ms. Stoddart appeared before that committee. Members spent a considerable amount of time with her, as I hope we will this afternoon.

They did not use the Committee of the Whole process, but they did use their committee system. After the committee process, there was unanimous consent to confirm the nomination.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, with regard to the motion, I would like to proffer a suggestion. Perhaps, before or after hearing from Ms. Stoddart, if the current acting commissioner, Mr. Marleau, is available, it might be appropriate for him to come before the Committee of the Whole to give us an opportunity to thank him for his work and, indeed, to ask him some questions.

That is simply a suggestion. If he is unavailable, that is fine.

[Translation]

**Senator Robichaud:** Honourable senators, this is a very good suggestion. We will try to see whether Mr. Marleau can join us this afternoon, given all the circumstances.

[English]

**The Hon. the Speaker pro tempore:** Is the house ready for the question?

**Hon. Senators:** Question!

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

**Hon. Senators:** Agreed.

Motion agreed to.

**BILL RESPECTING THE EFFECTIVE DATE  
OF THE REPRESENTATION ORDER OF 2003**

SECOND READING—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, respecting the effective date of the representation order of 2003.

**Hon. Brenda M. Robertson:** Honourable senators, I will keep my remarks on Bill C-49 reasonably short. In my other life in the province of New Brunswick, constituents used to tell me, when the waters got a little muddy, to speak in street language so that they could thoroughly understand what the legislation was about. I guess the water has been muddied in the debate on this legislation. As I was coming over from the Victoria Building this morning with some of my colleagues, I was astounded to learn that some of them believe that this bill has to be passed in order to establish the new constituencies. As they say down East, when you muddy the water, you cannot see the fish.

• (1110)

I do want to speak bluntly about this matter, in street language, so that I can be as clear as possible about this proposed legislation that I identify as pure gerrymandering. We all know what gerrymandering is. In our years of experience, we have grown to know that we do not like it, and it usually has effects that were not anticipated when the gerrymandering took place.

I worry about this. Surely, in our democracy, we know that we should not interfere with the Chief Electoral Officer. Surely, we know that. Obviously, however, some people do not know that. They still want to go back to gerrymandering.

Bill C-49 is interfering with legislation that controls the electoral process that is mandated for the Chief Electoral Officer, and we have no business interfering with that legislative process. Prime Minister Pearson understood that. Goodness knows, there are enough countries without democratic processes and without democratic governments where this would be a routine, and it would not matter because they have no respect in so many countries for the democratic process. However, in Canada, surely we have more respect for the democratic process than this.

At present, the Chief Electoral Officer knows by legislation that, once the electoral boundaries have been agreed to, he has a full year to prepare for another election: simple as that. There is nothing complicated about it. Those electoral boundaries, including the new boundaries in Alberta, British Columbia and Ontario, were established last August. The Chief Electoral Officer and staff know that they have, by law, a full year to prepare for the next election.

I will give honourable senators some examples of what happens when there is gerrymandering. Some people think gerrymandering is dead, that it is not happening at the local level. My province had a prime example of gerrymandering. It shows what can happen, unintentionally, when you try to do something for a friend in his backyard.

The only problem with the size of the constituencies in my small province of New Brunswick was in the area in which I live; that is, the Greater Moncton area. That is the growth area of the province. That is the engine for growth in southeastern New Brunswick. The federal constituency of Greater Moncton consisted of Moncton, my old hometown of Riverview, a small community, and the town of Dieppe. Dieppe may have become a small city. They may have, and if they have, I apologize for saying that Dieppe is a town. Those three communities make up the federal riding of Greater Moncton.

Let me tell you what happened in the gerrymandering process: Down in Rothesay — and most of you know where Rothesay is, just on the Moncton side of Saint John — there was a push on by influential people to have Rothesay included with Saint John so that a favourite son could run in Rothesay for that general Saint John constituency. That sounds simple. Rothesay is bundled in with Saint John, although it never has been before, but we will stick it in there so that the favourite son can run as a candidate.

I have a daughter who lives in that area, so I keep up to date with what is going on. In the last poll that I looked at from that area, only 6 per cent of the residents of Rothesay wanted to be tied in with Saint John. Thus, you have gerrymandering.

As a result of that gerrymandering, in the next adjacent riding, which goes up into Albert County where Riverview is, they had to tag on half of Riverview for the population balance. From Saint John, all the way up to Hampton, and north of Sussex, up the Bay of Fundy, to grab half of Riverview. The other half of Riverview goes in with Moncton. That skews things because Moncton now only takes half of Dieppe, and half of Dieppe goes in with another riding.

Dieppe and Riverview, two small communities, will have two members of Parliament, and probably will never have a chance of getting a member of Parliament living in their constituency. Moncton, which is the engine of growth, will have one member.

The answer to that puzzle, rather than gerrymandering, was to do what the citizens generally recommended. Do what they did in St. John's, Newfoundland: split it in two, so that you have two constituencies in the Greater Moncton area. No, the gerrymandering caused all of that foolishness. It was very frustrating.

There are always consequences when you interfere. That is true not only in the electoral processes but also in life. Many of us here have been around small children. This process that I see going on or trying to go on here reminds me of a small child, about 4:30 in the afternoon, demanding candy. The parent says, "No, you may not have candy right now because dinner will be in an hour and a half." The child throws a temper tantrum and the parent gives in and gives him the candy. When you serve supper, the child has no appetite. Not only is it bad nutrition but it also disrupts the whole family. Around nine o'clock at night, the child gets hungry again, instead of being asleep. Everything like this has a consequence. This is what we are doing.

I suspect I know who is throwing the tantrum over in the other place. Someone is throwing a tantrum. This is a wrong piece of legislation. It is tampering with the electoral process.

If this bill passes and some leader is foolish enough to call an election for April 1, he will lose those seats out West and in Ontario, but that is not the fault of this chamber, that is the leader's fault. He will do that at his peril. A leader comes in with enough baggage without further alienating parts of the country. It is not this bill that will alienate parts of the country; it is this process that is being forced upon us. It is truly wrong. There is nothing more sacred in our system than to leave the electoral process over there and let the elections officer do his thing.

We have had so many elections. We no longer wait four years. We have seen elections where there has not been time for staff to man polls in the cities, and where the polls are not set up properly and the returning officers are having trouble. If this bill goes through, there will be more problems, because there is not enough time for the Chief Electoral Officer to get all of those constituencies organized. You thought you had problems the last time around — and we all saw those problems, with the names that were left off the voter list. I do not have to mention the problems; honourable senators are familiar with the electoral process. The problems will be compounded on the next election day. There is not adequate time for the Chief Electoral Officer and his staff to prepare for an election called for April 1. All it is doing is catering to a group of people who think they own the country, and they do not own the country. The people own the country.

• (1120)

It is really quite disgusting. It is wrong and you should know better.

[ Senator Robertson ]

I will not say any more at the moment, honourable senators. I know we have a busy day before us. I feel very strongly about this issue. I am sorry for what you are trying to do because it belittles this chamber.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, would the Honourable Senator Robertson take a comment and a question?

**Senator Robertson:** Yes, honourable senators.

**Senator Lynch-Staunton:** My comment has to do with Senator Robertson's examples of gerrymandering. The best one I have heard took place in a province that I will not identify. The line divided a six-storey apartment building in two. As a result, the first three floors were in one riding and the top three were in another. There was careful and meticulous defining of boundaries in those days!

The honourable senator mentioned that the one-year delay was put in place to ensure that the Chief Electoral Officer had all the time needed to put everything in place, in particular the polling stations, which is the last step. Once the boundaries are known and confirmed, defining the polling stations is the last step. Today, that is easy to do with advanced technologies, but in those days it was hard.

Will the honourable senator not confirm that the one-year delay was put in place not just to give time to the electoral officer but to give time to all the political parties, even the major one, the one with the most volunteers and personnel, and that it was felt that that one-year delay was just right? I am convinced that for many parties, certainly ours, the six months will be very difficult to abide by, particularly as all parties must abide by the new election financing measures, which come into effect January 1. The ridings that have not abided by them will not receive certain benefits. There is a double requirement now, which is why it is essential that the one-year delay be maintained.

**Senator Robertson:** Honourable senators, I could not agree more with the comments of the honourable senator. It affects all parties. However, it affects the people more. It is the people who will be negatively affected by this. If the parties cannot function properly, if they do not have enough time, and if the Chief Electoral Officer does not have enough time, it is the people who will be in trouble.

**Hon. David P. Smith:** Honourable senators, could the honourable senator explain to us her understanding as to why all her Progressive Conservative colleagues in the other place, save one member from Manitoba, voted in favour of this bill on third reading, including her New Brunswick colleagues? Can the honourable senator explain why they saw fit to vote in favour of this bill?

**Senator Robertson:** Honourable senators, I would never try to explain why those in the other House do what they do. I have enough trouble trying to understand what we do here. Sometimes, it is not pretty. Sometimes, when you are in a minority, they vote for measures because they are tired of arguing and debating and they know they will lose. I am not sure; you will have to ask them. I do not agree with them.

**The Hon. the Speaker:** Senator Robertson's time has expired. Is the honourable senator asking for additional time?

**Senator Robertson:** Not necessarily.

**The Hon. the Speaker:** I will take that as a no.

**Hon. J. Michael Forrestall:** Honourable senators, I did wish to speak. However, upon hearing the new suggestions of my leader, I think I will take more time to look into the financial implications of this bill.

May I move the adjournment of the debate?

**The Hon. the Speaker:** Honourable senators, it was moved by the Honourable Senator Forrestall, seconded by the Honourable Senator Stratton, that further debate be adjourned to the next sitting of the Senate.

In anticipation that there may not be agreement on this, let me put it this way: Will all those in favour of Senator Forrestall's motion to adjourn the debate please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will all those opposed to the motion please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** I believe the "nays" have it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** A vote is required. As we all know, a one-hour bell is required. I am looking to the chamber for some direction, if it is available, given the fact that we have an order from the house to vote at 12:30, and we have Royal Assent at one o'clock.

**Hon. Terry Stratton:** Honourable senators, we agree to have the vote at 11:50.

**The Hon. the Speaker:** Honourable senators, the bells will ring at twelve noon for the vote to be held at 12:30. Following the vote, the bells will continue to ring until —

**Hon. Sharon Carstairs (Leader of the Government):** Your Honour, the agreement is that the bells will begin to ring now for this vote. They will stop ringing at 11:50, at which point a vote will be taken.

**The Hon. the Speaker:** I thank the Honourable Senator Carstairs for clarifying that for the Chair.

The vote will be at 11:50 a.m. Call in the senators.

Debate suspended.

• (1150)

## BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, before I put the question, I am obliged to advise you that, while the bells rang in all the regular places, unfortunately, the bells did not ring in the Victoria Building.

**Some Hon. Senators:** Oh, oh.

**The Hon. the Speaker:** Shall I proceed?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I became aware of this about 15 minutes ago. I know that message was sent to the whip's office on the other side. We sent a general e-mail to everyone in all their offices, no matter where they were located. We also asked the security guards to knock on every senator's door in the Victoria Building to inform them that a vote was being held.

**Hon. John Lynch-Staunton (Leader of the Opposition):** I hope the correction will be made for the next vote. It is essential that those bells ring, Your Honour.

## BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

### SECOND READING—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, respecting the effective date of the representation order of 2003;

And on the motion of the Honourable Senator Forrestall, seconded by the Honourable Senator Stratton, that further debate be adjourned to the next sitting of the Senate.

**The Hon. the Speaker:** Hearing no objection, I will put the question.

Will those in favour of the motion to adjourn debate please rise?

Motion negated on the following division:

YEAS  
THE HONOURABLE SENATORS

Comeau	Lynch-Staunton
Forrestall	Rivest
Kinsella	Stratton—7
LeBreton	

NAYS  
THE HONOURABLE SENATORS

Bacon	Kroft
Banks	LaPierre
Bryden	Lapointe
Callbeck	Léger
Carstairs	Losier-Cool
Chalifoux	Maheu
Chaput	Milne
Christensen	Moore
Corbin	Morin
Day	Pearson
De Bané	Pépin
Downe	Phalen
Fairbairn	Plamondon
Finnerty	Poulin
Fraser	Poy
Furey	Ringuette
Gauthier	Robichaud
Gill	Rompkey
Grafstein	Sibbeston
Graham	Smith
Harb	Sparrow
Hubley	Trenholme Counsell
Jaffer	Watt
Joyal	Wiebe—49
Kenny	

ABSTENTIONS  
THE HONOURABLE SENATORS

Cools	Prud'homme—2
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**The Hon. the Speaker:** Honourable senators, it is approximately four minutes before twelve when we, by order, must call in the senators. Do you wish to continue with debate on this bill for the next few minutes?

**Hon. Senators:** Yes.

**Hon. J. Michael Forrestall:** Honourable senators, I had it at the back of my mind that I would like to go back and review the degree to which any action that we would contemplate here might do two things: First, to deny access to these additional seats to people in other parts of Canada; and, second, as mentioned by the Leader of the Opposition in the Senate just a short while ago, that there might be some financial impact. I wanted to review those

two things once again because I do not believe that there is such an impact. In fact, had there been opportunity and time, I would have attempted to make a case for re-examining the need for a cap on the absolute number of members of Parliament.

The other place grows and will continue to grow because it is attached to a formula. It has no end, although there is a capacity to end it. Over the next few years, it is a question that should seize our attention: that some other method of adjusting the numbers of members of Parliament from time to time should be implemented so that we might preclude and avoid the problems that we are getting into. For me, tomorrow will be my anniversary of spending 38 years in that chamber and in this one, and never have I seen redistribution go through without charges of gerrymandering and without corruption innuendo, and so forth.

Those few words are to indicate that I have those three basic concerns. First, I do not believe it will interfere with anything. The seats are there; they will come into being. Second, there is no reason, other than to satisfy Mr. Martin, to speed the electoral process of change. Third, perhaps we should take a look at the whole process again.

Debate suspended.

**BUSINESS OF THE SENATE**

**The Hon. the Speaker:** Honourable Senator Forrestall, I am sorry to interrupt you. However, it being twelve noon, pursuant to the order adopted by the Senate on November 6, 2003, I must interrupt the proceedings for the purpose of putting the question on the motion in amendment of the Honourable Senator Bryden to Bill C-34.

The bells to call in the senators will be sounded for 30 minutes. The vote will take place at 12:30 p.m.

Call in the senators.

• (1230)

**PARLIAMENT OF CANADA ACT**

**BILL TO AMEND—THIRD READING—  
MOTION IN AMENDMENT ADOPTED**

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the third reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

On the motion in amendment of the Honourable Senator Bryden, seconded by the Honourable Senator Sparrow, that Bill C-34 be not now read the third time but that it be amended,

in clause 2,

(i) on page 1, by replacing lines 8 to 27 with the following:

“20.1 The Senate shall, by resolution and with the consent of the leaders of all recognized parties in the Senate, appoint a Senate Ethics Counsellor.”

(ii) on page 2, by deleting lines 1 to 49,

(iii) on page 3, by deleting lines 1 to 11.

Motion in amendment agreed to on the following division:

YEAS  
THE HONOURABLE SENATORS

Andreychuk	Kenny
Angus	Keon
Atkins	Kinsella
Bacon	Kroft
Baker	LeBreton
Banks	Lynch-Staunton
Beaudoin	Maheu
Bryden	Meighen
Cochrane	Moore
Comeau	Murray
Cools	Pépin
Corbin	Pitfield
Di Nino	Poulin
Doody	Prud'homme
Eyton	Rivest
Forrestall	Robertson
Furey	Sibbeston
Gauthier	Sparrow
Gill	Spivak
Grafstein	Stollery
Gustafson	Stratton
Johnson	Tkachuk
Joyal	Watt—47
Kelleher	

NAYS  
THE HONOURABLE SENATORS

Biron	LaPierre
Callbeck	Lapointe
Carstairs	Léger
Chalifoux	Losier-Cool
Chaput	Milne
Christensen	Morin
Day	Pearson
De Bané	Phalen
Downe	Plamondon
Fairbairn	Poy
Finnerty	Ringuette
Fraser	Robichaud
Graham	Rompkey
Harb	Smith
Hubley	Trenholme Counsell
Jaffer	Wiebe—32

ABSTENTIONS  
THE HONOURABLE SENATORS

Nil.

**BILL RESPECTING THE EFFECTIVE DATE  
OF THE REPRESENTATION ORDER OF 2003**

SECOND READING—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, respecting the effective date of the representation order of 2003.

**Hon. J. Michael Forrestall:** Honourable senators, I will be somewhat brief in my comments and observations. I had sought a little more time. Because of illness in my office, my notes are locked away. I have not yet been around here long enough to enjoy the confidence of everybody with the right of access to those notes, so bear with me.

As nearly as I can gather from a perusal of the bill, nothing would happen if, for example, we did not pass this bill until late July or early August of the year 2004. Therefore, I am not seized with any sense of urgency, other than private reasons, for bringing it on earlier.

I recite the message to the government from several interveners, and repeat the fact that government financing and assistance in this regard will be somewhat set askew. In other words, we may very well wind up with two or three agendas for funding, all of which could be legal, posing serious problems for the Chief Electoral Officer and the provider of funds.

• (1240)

I have hesitations with respect to this matter in that regard. If someone could explain to me just precisely what it is that Mr. Martin or others hope to gain from this desire to change the implementation date from one year to six months, then I would be very pleased to listen.

I wanted to wind up with what I touched on earlier, which has to do with the various formulas that have been floated in the last 20 years with respect to the growing of the House of Commons. We are now at 300 MPs, more or less. The formula, by the time some of the younger members of this chamber reach retirement age, will be approaching 360. That is a quick calculation done in the last 20 minutes or so — do not take it to the bank. However, it makes the point. Where does the growth of the number of members of Parliament who sit in the House of Commons end? Where will we seat them?

There are those who seriously advocate an elected Senate. We are 105. Can you imagine the authority? Any senator with four or five MPs and 15 or 20 MLAs or MNAs would be a very powerful politician in our structure, just as federal senators in the United States are very powerful. Indeed, they are seats of powers onto their own.

If things get out of whack, there is a sense of losing control or not doing things in an orderly fashion. There is an old saying that the worst form of pollution is the discarding of a good idea before its time, before it has been used to its full advantage to the benefit of people. This is one of those situations.

We have an enviable process that has withstood many attacks, many attempts to circumvent it, and it has not been found wanting. I would suggest that honourable senators might want to think for a moment before we finally vote on this matter. It is not only about whether or not to help one or two members of Parliament, notwithstanding how powerful one of them may be in a day or so. Think, rather, of the long-term impact of continuing a process and a system of growth or change that undergoes a very exhaustive study before it happens.

Indeed, it has been my experience that changes to the electoral boundary system have enjoyed community input on every occasion. They have stimulated interest in sustaining community identification. What would little girls from the north side want to do with those bad fellows from over in the bay? I do not think they would want that at all. Little boys from Sheet Harbour rarely go up into Upper Musquodoboit, except to the dances once a month. They stay in their own community. They shop in their own community. There is a sharp division line between going to Antigonish for your purchases or going to Dartmouth and Halifax. You go across a little bridge, and everybody goes east on this side of the bridge and everybody comes back west. These forces are there, and they are natural.

However, there is nothing in that that I can relate to this desire to bring the matter on by six months. In the absence of any facts and statistics that I have with respect to how we grow the Parliament of Canada, how we treat the numbers as we try to leave a collective legacy, I think we should think twice. Unless there is an enormous urgency for this, perhaps we should stand it for four or five years.

Thank you for allowing me to intervene.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** I wonder if the honourable senator would take a question?

**Senator Forrestall:** Yes, sir.

**Senator Kinsella:** Senator Forrestall is the dean of parliamentarians from Atlantic Canada and has served many years in the other place. My question is twofold. The redistribution does not affect Atlantic Canada, but it does affect Ontario, British Columbia and Alberta. Given that the redistribution of the new seats is based on the last decennial census, we, as Atlantic Canadians, are quite comfortable, are we not, with these extra seats that would go to Ontario, British Columbia, and Alberta?

**Senator Forrestall:** Yes, of course, you are right. I am not arguing that anything that is now in place be changed at all. I am just suggesting that when we come to the next generation of growth, that we pause. If there is something that we can do with this — for example, putting the six months back to the one year — then we leave a process in place. I suggest it should perhaps be there for another full term — another four, five, six years, at the most — and then be re-examined.

The mid-term census will be along, and then we will be into the next decennial census. At that time, we might begin to look at rethinking the formula that grows the Parliament of Canada.

We are fine. What is happening now does not affect us. I discern no one in the debate so far opposed to the additional, and needed, seats in those parts of Canada.

**The Hon. the Speaker:** I am sorry to interrupt, honourable senator, but your 15 minutes have expired.

**Senator Forrestall:** I would request leave to continue.

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Leave is granted.

• (1250)

**Senator Kinsella:** I raise this second question as a senator from the Maritime division under the Constitution. Is it not true that one of the elements that demonstrates the great wisdom of those who gathered in Charlottetown to found this great land of ours, and to propose a system of governance under the Westminster model, would ensure that the exercise of power in Parliament would be as balanced as we can make it and, therefore, the members of the House of Commons would be selected on the basis of population? However, the Fathers of Confederation said that a demographic movement could occur from one region to another across the country. Indeed, of the 301 ridings in Canada today, 103 are in Ontario. We do not begrudge that, obviously, from a demographic point of view, because the major concentration of the population is located in Ontario. The honourable senator comes from Nova Scotia and I come from New Brunswick. Neither province has a large population.

The Fathers of Confederation were seeking to set a system of governance in place on the Westminster model for Parliament and so they created this chamber. I know that many honourable senators would like to see the method of selection of members in this chamber modified. Myriad suggestions have been made over the years as to how that might be done.

I do not think there have been many solid arguments on the importance of the Senate in respect of the balance of power in Parliament. Part of that balance is created by the election of members to the House of Commons on the basis of population. The numbers from the Atlantic region — Newfoundland and Labrador, Nova Scotia, New Brunswick and Prince Edward Island — on a purely demographic basis, would fall below the numbers that are currently in the House of Commons because of the wisdom of the founders of this great land and system of governance. The Fathers of Confederation said that there needed to be a balance between the number of senators from Atlantic Canada and the number of members of Parliament.

[ Senator Forrestall ]



What would Senator Forrestall say to those who come from more populace regions of the country that we have a specific number of members in the House of Commons because of the number of senators that we have, which has been laid out in the Constitution? If we chose the number of members to the House of Commons on the basis of the census only, we would have far fewer member representatives in the House.

**Senator Forrestall:** Honourable senators, that would be someone else's problem because I will be long gone. I have given this some thought, and I recognize that the growing of Parliament causes many problems and difficult decisions. I enjoyed the debates of Mr. Allen MacEachen and Mr. Bob Stanfield — two easterners — on this issue. When they spoke, it was difficult to discern whether they were from British Columbia, Alberta or Nova Scotia because they were nationalists. They saw the whole country and the areas of disproportionate rate of growth in the central parts. They devised a modest formula to increase the basic representation, in other words to increase the number of people per riding faster than the growth in the number of ridings. That has served us well and it still does.

After the next decennial census, Parliament will have to deal with this either from within or by way of outside consultants. We must look at other jurisdictions to learn how the problem has been solved elsewhere. I do not think we would want to change to a great extent until after the next decennial census.

**The Hon. the Speaker:** Honourable senators, I am sorry to interrupt the debate but it is nearing the time for Royal Assent.

Debate suspended.

#### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Before I leave the chair, I would draw the attention of honourable senators to the presence of Mr. Vernon Theriault, Westray miner and recipient of the Medal for Bravery; Mr. Peter Boyle, President, Local 343, United Steelworkers of America; Ms. Del Paré, miner; Mr. Dennis Deveau, Legislative Director, United Steelworkers of America; and Mr. Allan Martin and his wife, Debbie, representing the families of the 26 miners who died at Westray, one of whom was Allan's brother, Glenn Martin. Welcome.

Is it your pleasure, honourable senators, that the Senate do now adjourn during pleasure to await the arrival of Her Excellency the Governor General?

**Hon. Senators:** Agreed.

The Senate adjourned during pleasure.

• (1300)

[Translation]

#### ROYAL ASSENT

Her Excellency the Governor General of Canada having come and being seated on the Throne, and the House of Commons having been summoned, and being come with their Speaker, Her Excellency the Governor General was pleased to give the Royal Assent to the following bills:

An Act to amend the Criminal Code (criminal liability of organizations) (Bill C-45, Chapter 21, 2003)

An Act to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts (Bill C-25, Chapter 22, 2003)

An Act to establish the Canadian Centre for the independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts (Bill C-6, Chapter 23, 2003)

An Act to establish Holocaust Memorial Day (Bill C-459, Chapter 24, 2003)

An Act to amend the Canadian forces Superannuation Act and to make consequential amendments to other Acts (Bill C-37, Chapter 26, 2003)

An Act to amend the statute law in respect of benefits for veterans and the children of deceased veterans (Bill C-50, Chapter 27, 2003)

An Act to amend the Income Tax Act (natural resources) (Bill C-48, Chapter 28, 2003)

An Act to amalgamate the Canadian Association of Insurance and Financial Advisors and The Canadian Association of financial Planners under the name The financial Advisors Association of Canada (Bill S-21)

The Honourable Peter Milliken, Speaker of the House of Commons, then addressed Her Excellency the Governor General as follows:

May it please Your Excellency.

The Commons of Canada have voted certain supplies required to enable the Government to defray the expenses of the public service.

In the name of the Commons, I present to Your Excellency the following bill:

An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004 (*Bill C-55, Chapter 25, 2003*)

To which bill I humbly request Your Excellency's assent.

Her Excellency the Governor General was pleased to give the Royal Assent to the said bill.

The House of Commons withdrew.

Her Excellency the Governor General was pleased to retire.

• (1310)

[*English*]

The sitting of the Senate was resumed.

#### BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, before I take my seat, I would like to remind honourable senators that the tradition of a Speaker's reception following Royal Assent is still in place, and honourable senators are welcome to participate in a light lunch, which is available in the Speaker's chambers in the presence of our guests from Westray and the Governor General.

#### BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

##### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, respecting the effective date of the representation order of 2003.

**Hon. John Lynch-Staunton (Leader of the Opposition):** May I ask a question of Senator Forrestall?

When this bill goes before, I assume, the Legal Committee, one of the key witnesses will be the Chief Electoral Officer. I intend to take advantage of his presence to ask him his comments on the success of the new voter registration system as compared to the old enumeration system. Some of us maintain that, while more costly and more difficult to implement, the old enumeration system at least was more complete in drawing up electoral lists because the onus was on the government to find enough people to go from door to door, to leave reminders and then to send cards indicating to what polling station voters were to attend.

Under the present system, it is up to the individual to register, and if a voter changes ridings and does not so advise, or the electoral officer is not so advised through information available from provinces or through ticking off the little box on their income tax form, it could be that many people are left behind.

• (1320)

I was told that in the last Nova Scotia election, which used the permanent voters list, many people were left off or listed in the wrong ridings, and that there were even deceased who were listed.

Does Senator Forrestall have a view on which system we should be implementing to ensure that everyone eligible gets on the list?

**Hon. J. Michael Forrestall:** I thank Senator Lynch-Staunton for that question. There is evidence that suggests a workable number at which you can begin to automate voters lists, and it is not 20 million or so, the number of voters now in Canada. It is closer to over 100 million, when financially it becomes almost impossible to avoid it. Of course, we are nowhere near that. Some jurisdictions are trying various forms of automation to see what might work and where some of the major problems lie, but we are nowhere near the need for automated voting or permanent lists, as they are sometimes known.

Indeed, I think the Chief Electoral Officer could tell you about the cost to those who are left off. Speaking of gerrymandering, I know of a situation where 20 polls were left out. Those people had no place to vote and did not get to vote. It cost them the last election.

We are still many years away from an economic urgency to "electronify" and establish permanent voters lists, unless someone can come up with a better system.

The system in the United States is so foolishly out of date that probably only 60 per cent of the people there are enfranchised, for whatever reason. It is their own fault, but the rest are disenfranchised.

A good country is one in which citizens live without really thinking about government from day to day. They do not want to be preoccupied with the mechanics of something even as fundamental as their franchise. They want a good system in place, one with which they are familiar, that they know works and that they can, by and large, trust. When you start tampering with things this fundamental, you are encouraging and inviting enormous problems, not to mention, until it is economically feasible, enormous cost.

I would counsel against it. In the good old-fashioned way of door-to-door enumeration, representatives of at least the two parties having obtained the largest number of votes in the previous contest are present to register the voters in the home. When there is no response at a home, they are obliged to go back and to go back again. Good enumerators will keep going back until they are satisfied that the list is as complete as possible. Beyond that, any good candidate has a committee working those lists hard, as I did for 25 years. No one was left off in Dartmouth.

I can do nothing other than suggest to you that in your conversation with the Chief Electoral Officer you tell him that there are people with reservations about permanent voters lists at this time. When we have 200 million or 300 million people, we should consider it.

**Hon. David P. Smith:** Could Senator Forrestall explain to us why, in opposing this bill, he disagrees with the position taken by the leader of his party, a fellow Nova Scotian from the PC caucus, and also Scott Brison, another colleague from Nova Scotia, both of whom, on third reading of the bill, voted for it in the House?

Also, perhaps he could tell us why the Senate should tell the House that, although four of the five parties in that place supported this bill, we know better as to when this bill should come into effect, as well as the basis of his disagreement with his party leader.

**Senator Forrestall:** I have a previous engagement with Her Excellency the Governor General, at which, perhaps, Senator Smith would care to join me.

In response to his question, one day I will ask him where all the miscommunications arise between this chamber and the other with respect to government authority.

Honourable senators, perhaps we should not keep Her Excellency waiting too much longer than we have. I am rather old-fashioned about these matters.

[Translation]

**Hon. Gerald J. Comeau:** Honourable senators, I have listened attentively to the questions that were raised concerning this bill. I thought it was a bill to advance the date of the election. When I heard the concerns of various senators, I told myself that it required more thought.

The honourable senators who have examined this bill in depth have convinced me that we should not proceed too rapidly with it. It is the Senate's role to give sober second thought to all bills.

The honourable senators who have examined this bill have raised concerns with respect to Elections Canada. Senator Lynch-Staunton raised a point that has worried me; that the Chief Electoral Officer had sent a letter to the parties suggesting an earlier election date.

• (1330)

The leader of our party has dealt with that more thoroughly. One thing that bothers me even more is that recently, in this chamber, we have begun to pass bills with a majority — there is nothing wrong with that, since the majority wins in elections, and we must accept that — but a great many of the newer senators do not seem to be aware of the consequences of their votes for or against bills. Many of the new senators seem to be prepared to vote blindly on decisions that will change the very nature of the Senate and of our country, without realizing what is at stake.

It is beginning to worry me, because we do not appear to be listening to the people with a thorough knowledge of the issues raised by the bills we are considering. For example, we recently considered the bill on cruelty to animals. At the beginning I was in favour of it, and later we listened to the concerns raised by our Aboriginal friends from the North. They convinced a number of us that we should not move too quickly in passing legislation. That is the beauty of the Senate; here we see people who have vast knowledge and experience that some of us do not have.

In this case, concerns were raised by Aboriginal people. At first, Senator Beaudoin and myself were in favour of the bill, but we started listening to them and we were no longer so sure. The same thing happened with the ethics bill. I listened to one of our colleagues, one who I thought had considered the issue thoroughly, who told us this week that we should pass the bill because a reporter from *The Hill Times* had written an article and the bill had to be passed quickly. That is nonsense. I do not even know if this reporter ever heard of the Senate, and we are expected to pass a bill just because someone from *The Hill Times* says so.

In addition, the underlying reason for passing the bill as quickly as possible was to address a perception problem. That, in a sense, is what Senator Carstairs was proposing. She must think that Canadians are clueless, that they are content to have us tackle things superficially, that because we have an ethics bill, all is well. Fortunately, senators like Senators Furey, Joyal, Grafstein, Beaudoin, Nolin and others, have extensive experience and have demonstrated that there were problems with this or that bill.

Some, like me, may not, at first, have been aware of all the implications and, all of a sudden, were made to realize that we should not be rushing matters.

Next week, Paul Martin will become the new leader of the Liberal Party. It will be a bit odd to have a Prime Minister who is not the leader of the party and a leader who is not the Prime Minister. The future Prime Minister wants to be able to call an election any time he wants. We are basically rushing a bill through so that Mr. Martin can call an election when he pleases.

That is not what we are here for. We are here to serve Canadians.

[English]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I want to be helpful to the deputy leader. We have agreement that we will have Committee of the Whole. There is a practical problem that we have to put the tables in, et cetera. As we cannot allow strangers in the place, I recommend that we suspend. That would also give an opportunity for those of us who would like to greet Her Excellency as well. I move that the house suspend until two o'clock.

**Senator Lynch-Staunton:** Honourable senators, I would suggest two o'clock or the time it takes for these gentlemen to finish their work.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, it was not my intention to interrupt the Honourable Senator Comeau, who was in the midst of giving a speech. I will be at the house's disposal once he has finished.

[English]

**Senator Carstairs:** Question!

[Translation]

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to suspend the sitting until 2 p.m. this afternoon?

**Hon. Senators:** Agreed.

The sitting was suspended.

• (1400)

The sitting was resumed.

**Senator Comeau:** Honourable senators, since our witnesses are ready to appear before the Committee of the Whole, I move adjournment of the debate.

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

**Hon. Senators:** Agreed.

On motion of Senator Comeau, debate adjourned.

[English]

## PRIVACY COMMISSIONER

### MOTION TO APPROVE APPOINTMENT OF JENNIFER STODDART ADOPTED—CONSIDERATION IN COMMITTEE OF THE WHOLE

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I move that the Senate do now resolve itself into Committee of the Whole to hear witnesses with respect to the appointment of the Privacy Commissioner.

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

**Hon. Senators:** Agreed.

Motion agreed to.

[Translation]

The Senate was accordingly adjourned during pleasure and put into Committee of the Whole, the Honourable Lucie Pépin in the Chair.

On the Order:

That, in accordance with Section 51(1) of the Act to extend the present laws of Canada that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves, Chapter P-21 of the Revised Statutes of Canada 1985, the Senate approve the appointment of Jennifer Stoddart of Westmount, Quebec, as Privacy Commissioner for a term of seven years.

**The Chairman:** Honourable senators, before we begin, may I draw your attention to rule 83, which states the following:

[English]

When the Senate is put into Committee of the Whole every Senator shall sit in the place assigned to that Senator. A Senator who desires to speak shall rise and address the Chair.

Is it your pleasure, honourable senators, that rule 83 be waived?

**Hon. Senators:** Agreed.

[Translation]

Pursuant to Order of the Senate, Ms. Jennifer Stoddart and Mr. Robert Marleau were escorted to seats in the Senate chamber.

**The Chairman:** I would like to welcome our witnesses and I call on Ms. Stoddart to take the floor.

**Ms. Jennifer Stoddart, Chair, Commission de l'accès à l'information, Québec:** I am pleased to appear before you today and I am very happy that you appointed me to this position, which involves great responsibilities and is very important to Canadians.

[English]

As you know, the Privacy Commissioner has important responsibilities, first, under the Privacy Act and, second, under the recently passed Personal Information Protection and Electronic Documents Act, to which I will return shortly.

As honourable senators know from their previous debates and experience, privacy issues are sensitive and important issues in Canada today. We are trying to reconcile our privacy with ongoing social and national needs. I will give a few examples. There are the issues of health care; matters of accessibility to information that government has on its citizens in a way that respects our own privacy; questions of access of information held on us by the government; and the growing question of how the private sector uses information that we may give out in the context of commercial transactions.

All this is taking place today in a highly charged context in Canada and in the international community. International security has been heightened in the last few years. Across the world, we see issues of border controls emerging because of the transnational and international migration of peoples, heightened again by security issues that are intermingled with this flow of peoples.

• (1410)

We are concerned also, as Canadians, about rising health costs. Therefore, to the extent that the cost of information transmission can speed and lower our health costs, we want to look at it in a way that is not intrusive to our privacy. Electronic commerce is imposing itself as the way to do business, and this brings us new privacy concerns.

Finally, all kinds of technological innovations pose new facets of issues of privacy, such as the legal access proposals of the government that were brought forward as a result of the Canadian government signing the International Convention on Cyber-Crime. This allows us, because we have the technological capacity, to go back and look at people's e-mails for the last six months. When we could not do it, these issues were not there. Now that we can do it technologically, we must determine the costs of doing it in terms of privacy and the benefits.

I believe you have received information on my candidacy, my previous training and my career. I have been a civil servant for 20 years, always in a management position. I am trained in law and the social sciences. I am a member of the Quebec bar and, until now, my career has been focused on human rights in one facet or another.

[Translation]

In closing, my first priority, should the Senate see fit to confirm my appointment, would be to restore the Senate's confidence in the Office of the Privacy Commissioner and its operation, by

following the Marleau plan. Mr. Marleau has set out a comprehensive plan for restoring the smooth operation of the office, and I would follow it. In cooperation with the Auditor General and the public service, I would inaugurate appropriate standards for the administration of personnel and public funds. In this, I would have the assistance of the two deputy commissioners who have been appointed.

The second priority, which must go hand in hand with the first, is to ensure the coming into force of the e-commerce legislation, to work in conjunction with the provinces on putting it into effect, and to ensure that Canadians have enough information to encourage voluntary compliance.

My final priority will be to continue to monitor government action in connection with privacy issues. As we know, government action tends, by its very nature, to pose a challenge for the protection of privacy in such areas as the multitude of data banks, the emergence of government online to provide better service to Canadians, the question of identity cards that is out there at present and, being discussed by Minister Coderre, the matter of video surveillance. These are all privacy-related matters that are being raised in government. I hope, honourable senators, that these few comments have been informative. I will be pleased to respond to questions.

**The Chairman:** Mr. Marleau, do you have any comments or statements?

**Mr. Robert Marleau, Acting Privacy Commissioner:** Honourable senators, if the Senate so desires, I could make a few remarks on the selection process.

At the end of August, I met the Honourable the Speaker Hays and the Honourable Speaker Milliken in order to inform them, so as to dispel any doubt, that I did not intend to seek a permanent mandate with the Privacy Commission and had the firm intention of leaving on or before December 31, 2003.

[English]

In September, I appeared before the Operations and Estimates Committee in the House of Commons and made that position public. I then urged the government house leader in the House of Commons, who was the lead minister on the file, to begin a selection process.

It became known that I would not pursue a permanent mandate. As a consequence, many Canadians made their interest known, at the office of the Leader of the Government in the House of Commons, to myself in my office, to the Prime Minister's Office and to the Privy Council Office.

All candidates that submitted their interests were reviewed by a pre-selection committee composed of the Leader of the Government in the House of Commons, the PMO and myself, against a set of criteria. I believe honourable senators have received a copy of the selection criteria.

[Translation]

I will not list them all for you. The documents are there for you to read.

[English]

Interviews were then held on October 10, and on October 10, from a short list of five candidates, one withdrew during the process. On October 17, the interview process was closed. A selection panel was composed of the Honourable Don Boudria, the Leader of the Government in the House of Commons; Nicole MacDonald, Director of Appointments in the Prime Minister's Office; Wayne McCutcheon, the Director General, Senior Personnel in the Privy Council Office; and myself, as the Interim Privacy Commissioner.

The interviews were conducted, on a series of those criteria that you have before you, with wide-ranging questions testing experience, knowledge and management skills, leadership being at the top of the list. Subsequently, reference checks were conducted by the Privy Council Office on the lead candidate, which was Ms. Stoddart, and all those references were laudatory and supportive.

Finally, there was the usual three-way security verification; that is, one with the CCRA, one with CSIS and one with the local police forces. All those confirmed Ms. Stoddart as a qualified and desirable candidate.

[Translation]

That is, in essence, what I wanted to say at this stage, and I will be happy to answer questions from the honourable senators.

[English]

**Senator Kinsella:** I wish to begin my questioning with Mr. Marleau. By way of preambular comment, let me extend, on behalf of my colleagues, our deep appreciation for the work you did and the leadership that you provided under very difficult circumstances. Congratulations. We were very appreciative and very reassured, knowing that a very distinguished former officer of Parliament would fill the gap that was created.

In that period of time as the Privacy Commissioner, what were some of the administrative issues that really stood out for you in relationship to what the act provides and the particular machinery that had been put together to meet the objectives of Parliament when we passed the act and created the office?

**Mr. Marleau:** Thank you for your kind comments, Senator Kinsella, about my coming forward on this interesting file.

In response to your questions, there are two issues that I would draw to your attention and to the attention of the entire Senate body.

[ Mr. Marleau ]

There are two statutes for which the Privacy Commissioner is responsible: the Privacy Act and, now, the PIPEDA Act, passed in 2001 as the Personal Information Protection and Electronic Documents Act. It became apparent to me, say, six weeks into the mandate, that the office needed to be restructured around these two statutes. It was no long an issue of just privacy in the public sector and privacy under the new statute. The management structure had to be reshaped in order to support both those statutes.

PIPEDA is important because it will roll out to the entire private sector on January 1, 2004, in those provinces where a similar statute has not been adopted.

• (1420)

I felt we had to restructure our office around those two pieces of legislation. We now have an assistant commissioner responsible for the Privacy Act and an assistant commissioner responsible for PIPEDA.

**Senator Kinsella:** Mr. Marleau, in your experience over the past few months as a privacy commissioner, have you come across cases, identified either by citizens or by whomever, that raised for you questions as to certain government institutions under federal jurisdiction that were not effectively covered by the statutes that you were administering?

**Mr. Marleau:** This was also raised in other place when I appeared before them on the annual report of the office. There is the issue of Crown corporations and there is the issue of third party organizations and NGOs, who may be subsidized or funded through government funding, and those are the kinds of peripheral, if you like, federally engaged institutions that are not covered by the statute.

**Senator Kinsella:** Madam Chair, I would suspect it is to the report of the Privacy Commissioner where we really need to look.

I am tempted both not to ask and to ask a question as to your opinion with regard to whether or not Parliament should exert some influence in support of our officer, our Privacy Commissioner, such that some of these creatures of Parliament, indeed, are brought under the purview of the Privacy Commissioner.

**Mr. Marleau:** I have no hesitation in answering that question directly. It seems somewhat incongruous that PIPEDA will now apply to a series of private sector businesses, such as mom-and-pop video shops, and that the Privacy Act does not apply to many of the Crown corporations. I would invite the Senate to look at that closely.

**Senator Kinsella:** Honourable senators will recall how we did very consciously begin a process of letting the privacy commissioner know that the privacy commissioner could come to the Senate. We have had privacy commissioners before us in Committee of the Whole to learn from them of some of the difficulties that the office was having, such that we might use the influence of this house in the interests of the public. This brings me to the nominee.

In your experience with the National Assembly in Quebec, did you have a regular relationship with a committee? Did you go to Committee of the Whole at the National Assembly to bring forward problems that you were having or issues that you felt ought to be brought to it directly, and have conversations or dialogue in this kind of open forum with the National Assembly?

**Ms. Stoddart:** Honourable senators, no, the relationship of the Quebec Commission d'accès à l'information is slightly different. I believe it is different in law. The Quebec commission is part of the portfolio of the ministry. However, the commission, in its latest five-year report — and the National Assembly just finished sitting in public hearings on that report — has made the formal recommendation that the Quebec commission depend directly on the Speaker of the National Assembly. Therefore, the Quebec organization is looking for that kind of direct change.

Up until now, it has not gone to the National Assembly sitting as a Committee of the Whole. It goes very often before different committees. The first year I was named, I was in the National Assembly committee seven or eight times in the context of various pieces of legislation that were going forward. They would ask for our opinion and our testimony.

It has always been a relationship through a committee. There is a special committee called the "Commission of Culture," which is specially charged with reviewing the five-year report that the minister lays before the National Assembly every five years. There is a regular review process of that office.

**Senator Kinsella:** Could you share your view with honourable senators on this question: Do you believe that privacy is a human right?

**Ms. Stoddart:** Certainly, I believe privacy is a human right. Its exact legal status is another question, but I believe privacy is a human right.

**Senator Kinsella:** For the legal positivists in the room, what do you mean when you say that its legal status is in question?

**Ms. Stoddart:** I am sorry, I did not hear you.

**Senator Kinsella:** On the assumption that rights only are real rights if they are based on real law, do you question that the right of privacy is not a legal right?

**Ms. Stoddart:** Do I question that it is not a legal right?

**Senator Kinsella:** Is privacy a legal right?

**Ms. Stoddart:** I believe privacy is a legal right, but the type of legal right that it is, of course, depends on the particular law that you are dealing within our Canadian context.

**The Chairman:** Senator Kinsella, your time is up.

**Senator Kinsella:** Thank you, Madam Chair.

[*Translation*]

**Senator Beaudoin:** I have a question concerning privacy. It is also found in the Canadian Charter of Rights and Freedoms. I am referring to the Charter in the sense that it is case law, because it makes no mention of privacy as such.

**Ms. Stoddart:** No.

**Senator Beaudoin:** It is set out in sections 7, 8 and 9, and other legislation. You pursued graduate studies in France and at McGill. How do you view privacy? How do you define this concept? The right to privacy is fundamental.

**Ms. Stoddart:** This right has always existed and at the same time been somewhat implicit with regard to certain practices and all kinds of legislation, which differ from one society to the next and from one era to the next. We have always had a right to privacy without it being labelled as such. Privacy is inherent to the customs and traditions of each society.

With the emergence of British case law, the legal concept of privacy — which had remained uncontested in civil society — was established, perhaps for the first time, by criminal law. All the concepts underpinning our criminal law refer to privacy. This now serves as one of the bases for our definition of privacy. In criminal law, privacy is extremely important, as is evidenced by the restrictions on illegal searches and seizures.

• (1430)

**Senator Beaudoin:** The reason I am asking you this question is that we are senators and we have public lives and private lives.

Precedent, on sections 7, 8 and 9 of the charter and on many other statutes, is fundamental. There is a right; whether it is established by precedent or by the Constitution, it exists. Mr. Nadeau, a jurist, has written a thesis on privacy. I had the pleasure of directing his thesis. He made the meaning of this constitutional and legal concept quite clear.

The meaning of the word "privacy" is very important. Do you consider it a fundamental right?

**Ms. Stoddart:** Yes, it is a fundamental right in our legal culture. I have spoken with Mr. Nadeau. It can be acknowledged that it is not written explicitly into legislation, not even in the Charter of Rights and Freedoms. But it is an implicit right.

**Senator Beaudoin:** Have you had an opportunity to work with the Quebec juriconsult, Justice Albert Mayrand?

**Ms. Stoddart:** No, I have not had the honour.

**Senator Beaudoin:** You will in the future, I am sure. With respect to statutes, what value do you assign to the statutes, some federal and some provincial, that deal directly or indirectly with privacy rights? Are these quasi-constitutional or just ordinary laws?

**Ms. Stoddart:** If you look at the Charter of Rights and Freedoms or the Privacy Act, expressly set out in section 5, for Quebec laws, it has constitutional value. It has often been said, and I believe jurists are still debating the point, that the Quebec public sector access legislation also has a certain constitutional value because it is an act which takes precedence over others and which protects not only the right to access, of course, but also the right to protection of personal information. In case of interpretation, the primacy of this act is to be recognized.

**Senator Beaudoin:** There are quasi-constitutional laws. Do you believe that?

**Ms. Stoddart:** Honourable senators, it is a great debate. I would say that the Quebec Charter is a yardstick, first, and has a constitutional value for anything that concerns Quebec's legislation. In the body of Quebec's legislation, a law that has priority over others — the access legislation for example, has a status that is quite unique along with the Charter of Rights and Freedoms — certainly has a type of constitutional value.

[*English*]

**Senator Milne:** Ms. Stoddart, I have a particular interest in the historic census results, so I want to know what your attitude toward access to historical census results is. I will give you a little bit of background, so I do not blindside you.

**An Hon. Senator:** You only have 15 minutes.

**Senator Milne:** It has taken six years; forget 15 minutes.

All census results in Canada up to — and including now — the 1906 census have generally been released after 92 years. This has been the law of the land up until recently. Bill S-13, a government bill introduced in the Senate, was designed to allow controlled access to census results after 1906 — that is, 1911 on — after 92 years.

Bill S-13 has stalled over in the House of Commons and is, I suspect, fairly unlikely to proceed on the Order Paper over there until — well, who knows when? There will undoubtedly be a prorogation and an election before it actually gets going again.

**Some Hon. Senators:** Oh, oh!

**Senator Milne:** It was refused movement to committee over there by — I would not say who did it, but you can check Hansard. If this bill dies, as I suspect it will, on the Order Paper, what will be your attitude toward future bills along the same line, allowing access to historic census records?

I should tell you that when Bruce Phillips started his tenure as Privacy Commissioner, he was strongly against it. He believed in trashing and burning old census records. He gradually evolved over the years — year by year, we could see the difference in his answers here — until he finally agreed to a controlled access to them.

The last Privacy Commissioner, who has now left us, had an agreement with Mr. Phillips that he would stick to that line. Over the years that he was there, there was no continual change whatsoever in the attitude toward access to these historic records. I would like to know your attitude toward it.

**Ms. Stoddart:** Thank you, honourable senator. This is a question that does interest me, as you may have read. I have a past as a historian, and I have read the equivalent of many census records, both in New France and pre-Confederation census records.

I am generally aware of the position taken by the Privacy Commissioner. That seems to me, I guess, a position that I would be comfortable with. I would, however, like to add the personal note — and this is a spontaneous answer — that 92 years seems a short time to me.

We, as Canadians, are living longer. I forget the average age now, but it is around 80. That means many of us will live well over 80. If I look back into my own family life at something that was happening in the census of 1906 and 1911, my grandparents were alive. I remember my grandparents very well. I am not sure if the time is yet ripe to have people with whom you have a living link expose their lives completely to public gaze.

It depends then, of course, who the public is — and who would have access. I think professional historians are very conscious of the question of protecting privacy now. However, you have to remember that Canadians confide in the census because we believe in the confidentiality of that.

It seems to me that 92 years is quite short. Spontaneously, it would seem to me that a bit longer time span would protect the sense of intimacy that is in families when generations now last longer and when 92 years is, in fact, a very short time. We are talking about personal information. This is not aggregate information; this is information that can be linked to a single person living at a residence and so on. By going through the census records, you might discover things about your family that were the opposite of what you thought.

My spontaneous reaction is, should we not look for a slightly longer period?

[*Translation*]

**Senator Lynch-Staunton:** Before I address you, Ms. Stoddart, I would like to repeat to Mr. Marleau what Senator Kinsella said.



• (1440)

[English]

Mr. Marleau, thank you for assuming such a responsibility under tremendous handicaps. I understand that you have been able to leave to Ms. Stoddart a reasonably well-functioning organization that she could improve to return the office to its expected status.

[Translation]

Ms. Stoddart, I mostly want to ask you what the major differences are between the law, which governs the commissioner — I do not know the exact title of your counterpart in Quebec — and the law that will now govern you. Is there something in Quebec's legislation that should be included in the federal legislation, or vice versa?

[English]

Have you found any flaws in the Privacy Act that you would like to see improved? Are there any improvements that could flow from the Quebec law? What are the major differences in the authority given to you respecting the areas of your authority? To which departments do you have access? Will that apply in Quebec? Will you be able to transfer jurisdictions without being forced to re-adapt to the rules and regulations that will govern you?

**Ms. Stoddart:** Thank you, honourable senator. No, I will have to re-adapt because the laws of Canada are slightly different in respect of privacy — the practice and the customs. The previous interpretations are particular to the federal Privacy Act. The same general principles are respected in both legislations. However, the Quebec Privacy and Access Commission is an administrative tribunal that sits to hear cases of access, for the most part, and to investigate privacy cases. It turns out about 400 decisions per year. A large part of the work of the commission, about 50 per cent, involves hearing these cases. It also supervises the administration of law and gives advice to the government. Perhaps those parts are similar in the two commissions.

In Quebec, as in many other provinces such as Ontario, Alberta and British Columbia, access to information and privacy are in one statute and the same body has authority over both. This system has been in place in Quebec for 20 years. The system also applies to Quebec's private sector legislation. As you know, Quebec is the only province to date to adopt private sector legislation, which was estimated by former Commissioner Radwanski to be substantially similar to the Privacy Act.

The commission plays the same role in the enforcement of the private sector legislation. The Privacy Act sets up a separate privacy commission, which has also existed for about 20 years. It

has adopted an ombudsman-type model, whereby the commissioner may investigate and make findings but has no order-making power.

That would be the major difference. The Privacy Commissioner, however, has the power to take a case before the federal court, but this happens infrequently, I understand. A complainant may also go before the federal court if he or she is not happy with the commissioner's findings. One is more a model of persuasion and the other is an executory model.

**Senator Lynch-Staunton:** You said that the Quebec Privacy Commission comes under the authority of one minister and that it was hoped the authority would be transferred to the Speaker of the National Assembly. Is that correct?

**Ms. Stoddart:** If I could correct you, honourable senator, it is not really under the authority of the minister. There is a carve-out in the Quebec Financial Administration Act and the Quebec Access to Information Commission, such that there are five commissioners and I am the president. There are four other commissioners. We adopt our own yearly objectives and action plan, which do not have to be approved by the minister. We have an arm's-length relationship with the government. Senator, you understood correctly that we have suggested that it would be better if the commission were attached to the Quebec National Assembly.

**Senator Lynch-Staunton:** Would you not prefer the stand-alone commission with more independent authority such that only Parliament can take it away?

**Ms. Stoddart:** That is what we have suggested. It would be equivalent to an Officer of Parliament. We would then be an agency of the Quebec National Assembly, as is the Office of the Auditor General of Quebec. We have suggested that as the ideal situation.

**Senator Lynch-Staunton:** As a final question on this round, is there close cooperation between provincial privacy commissioners and the federal privacy commissioner? That would not include information, obviously, but is there cooperation in respect of shared experiences, efforts to make the systems as uniform and seamless as possible, and the confirmation of privacy rights — provincial and federal — of all citizens? Is it a case of each commission working in its own bailiwick?

**Ms. Stoddart:** No, in my experience there is very close cooperation. The group of privacy commissioners across Canada tend to be dedicated individuals, sincerely interested in the issues of privacy. The commissioners meet as frequently as possible, given their budgets. There is an annual, informal meeting, frequent telephone meetings and individual conferences or conversations on issues of common concern. Basically, across democracies, the issues of privacy are highly similar. There is a highly networked privacy community that is congenial and helpful.

**Senator Lynch-Staunton:** Not to be provocative but if I were to suggest that privacy is more the hope than the reality, for obvious reasons, how would you respond?

**Ms. Stoddart:** Privacy is a reality in many circumstances. I think privacy exists and will continue to exist. It must exist. However, it does not exist in the form of hope only. Privacy is seriously challenged and will continue to be seriously challenged by technology and by the international situation in a changing world order. Yes, it continues to be a hope, but it is also a reality.

**Senator Lynch-Staunton:** I think that your predecessor accomplished his work extremely well and engaged himself actively in many areas, including challenging the government on what he felt was an intrusion of privacy in certain legislation. Bill C-17, which is currently before the Senate, is the second part of the government's anti-terrorism legislation in which there are threats to privacy. When Bill C-36 was first introduced, the former Privacy Commissioner did not hesitate to make his views known. Whether or not one shared his views, it was refreshing to have them brought to Parliament. Those views had an effect on the final bill. Do you see yourself able to point out to government, without hesitation, any threats to privacy rights that may occur in proposed legislation coming before Parliament? Would you alert us to them?

• (1450)

**Ms. Stoddart:** Absolutely. This is one of the key functions of the Privacy Commissioner. If he or she does not talk to Canadians, to the Senate and to the House of Commons about privacy threats, this whole aspect may go unnoticed. It is very important. We have seen, in the last three years, extremely new, unprecedented pieces of legislation, and I would continue to play an activist role because they are important. We are making milestone decisions with this legislation, and you have to hear all the aspects and ramifications before making your final decision.

[Translation]

**Senator Lynch-Staunton:** Your predecessor did excellent work and I encourage you to take the same path. Good luck in your new position.

**Senator Gauthier:** There is a different procedure for each of the five officers of Parliament. In the event that you are confirmed to this position, you will become part of this group.

Mr. Marleau was a Clerk of the House of Commons. He had our trust and swore an oath of allegiance as an officer of the House of Commons. Officers of Parliament are not obliged to swear allegiance, except for the Clerks of the House of Commons and the Senate. Mr. Marleau said so himself in a book he wrote. What do you think?

**Ms. Stoddart:** This is the first I have heard of this. I am surprised. I was sworn in by the Speaker of the Quebec National Assembly as the Chair of the Commission d'accès and I am still

bound by that oath. The Speaker of the Quebec National Assembly also swore me in when I was the Deputy Chair of the Human Rights Commission.

**Senator Gauthier:** This is a little known fact. The reality is that there is no specific oath prescribed for swearing in officers of Parliament. Should I take it for granted that you are in favour of the Privacy Commissioner's taking an oath?

**Ms. Stoddart:** Yes, absolutely.

**Senator Gauthier:** There is no common oath. Each officer takes a different one, and there was some negligence on our part. The Privacy Commissioner is appointed with the consent of the House of Commons and the Senate, on the recommendation of the Prime Minister or the Privy Council. The Auditor General and the Chief Electoral Officer are appointed on the recommendation of the Prime Minister and of the House of Commons, but not of the Senate. The other three officers have to undergo the scrutiny of both houses of Parliament. I will try to convince my colleagues to standardize all that. There are members of the other place who are in favour of standardizing all procedures for appointing officers.

If we demanded that you take an oath of allegiance, would you?

**Ms. Stoddart:** Yes.

**Senator Gauthier:** Your office is not subject to the Access to Information Act. Am I right?

**Ms. Stoddart:** That changed recently. Interim Commissioner Robert Marleau has already gone on the record on that.

**Mr. Marleau:** You are absolutely right. The Access to Information Act does not apply to the Office of the Privacy Commissioner, but I have made public statements saying that I had no hesitation in asking that this legislation be amended to make our office more transparent, in view of the need to protect certain files.

[English]

**Senator Pearson:** I would like to welcome Ms. Stoddart to the Senate. We have met in other circumstances. It will not surprise Ms. Stoddart that my question is about young people.

Specifically, my question touches on the issue of a child's right to privacy, and the Convention on the Rights of the Child, which was partly touched upon by Senator Kinsella as it relates to human rights and legal rights. An example of my concern relates to the new Youth Criminal Justice Act, and the degree to which the records of young people can be shared with school authorities and so on.

Without going into detail, my question is about the degree to which you feel your responsibility will be to look at all proposed legislation to determine the implications for privacy, and how they will respond to the obligations we have undertaken with respect to certain conventions and so on.

**Ms. Stoddart:** Thank you, Senator Pearson, for your question. It is a standard and ongoing responsibility of the Privacy Commissioner to look at oncoming legislation in order to evaluate its impact on privacy, and to give advice and make representations on them if necessary.

As you say, we both share an interest in issues relating to youth, myself from the time I spent at the human rights and youth rights commissions. This carried over to my most recent responsibilities in access to information privacy. I found that all the commissioners at the present Quebec access to information commission shared my concern, when I started to work within that system, of the number of files of young people for which access was being sought — not by the young people themselves, but usually by a parent who was involved in some other dispute or had another issue ongoing.

We recommended to the Quebec National Assembly that, in access to information and privacy issues going forth under that provincial legislation, the child be represented, in the light of Canada's, and therefore Quebec's, obligations under the international Convention on the Rights of the Child.

The fighting that goes on over who gets access to the school records, who gets access to other records, to police records, is a matter of very serious concern to us, and the desire of a parent to know what their child said, and so on and so on. It is clear to us that it is the interest of someone else that is foremost. Therefore we think this would be an important amendment.

I give this example to show my own personal concern with the issue of the rights of children.

**Senator Comeau:** Mr. Marleau and Ms. Stoddart, it good to have you in the Senate. Welcome. I would like to get back to the question raised by Senator Milne regarding the promise of confidentiality in the census bill. The premise of the bill, as proposed at that time, was that the promise of confidentiality to the individual, the census respondent, would die after 92 years. The promise dies with the respondent.

• (1500)

I think that even the most ardent of supporters of the bill believe that that promise was made and that there is a "best before" date. After 92 years, the "best before" is gone. The problem is that when the promise was made, there was no expiry date on it.

You said that 92 years may not be long enough. In fact, if the promise was made without an expiry date, does even more than 92 years reduce the value of the promise?

**Ms. Stoddart:** Honourable senator, it would be difficult for me to give you a precise answer. I would have to look at exactly what

was said to Canadians 92 years ago. I have not looked at this issue recently and I do not know what was said to them.

**Senator Comeau:** If you would.

**Ms. Stoddart:** I will.

**Senator Comeau:** My concern about the bill was that there was a promise made. If we wish to bring in a bill that says that henceforth there shall be no promises of confidentiality, or that promises of confidentiality extend for only 92 years, we may do that. However, it is our duty to keep the promises of our predecessors. If we start saying that when our predecessors are gone their promises go with them, soon Canadians will say that the promises that politicians make in writing are not worth the paper they are written. That is something you might want to look into.

I already advise constituents who ask me questions regarding the census to be very cautious, because two federal ministers, Sheila Copps and Allan Rock, said that it was perfectly correct to do this.

My second question is with regard to a bill we passed a few years ago on long gun registration. Without going into the merits of the bill, there were provisions in it to seek information from Canadians who wished to get a licence to own these firearms. The questions included the following: Have you had a recent mental breakdown? Have you just ended a relationship with someone? Have you recently failed a test? Have you been fired from a job? These are very loaded questions about private matters, and they required a "yes" or "no" answer, which answers go on to government files.

Should Canadians be asked such questions requiring "yes" and "no" answers? If one has had a mental breakdown, that information should probably be kept between a doctor and a patient, but now the government is saying that if people want a gun licence, we need to know this information.

What are your thoughts on that?

**Ms. Stoddart:** Honourable senator, it is hard for me to answer you in any great detail because I have not looked into that legislation myself. However, I know that the Office of the Privacy Commissioner had serious concerns over several years about this, and I have heard the concern expressed publicly that these are extremely intrusive questions.

My understanding is that the investigation is ongoing in the Privacy Commissioner's office. Without judging that legislation right now, I would say that those kinds of questions are, as you say, usually questions reserved for a doctor-patient relationship.

**Senator Comeau:** There is still a stigma attached to mental illness, and it sometimes results in a certain kind of unwanted attention in the community. Therefore, people have a tendency to avoid making it public. My concern is that, if the government asks those types of questions, people will not seek the medical help they need in order that they can keep their rifles. The very people who need help will not seek it because they do not want that information on record.

I would expect a commissioner of privacy to understand that those types of questions will cause more problems in society because of their intrusiveness, because people will not seek the help they need. I would hope that the Privacy Commissioner would champion the cause of stopping the government from asking such intrusive questions, because I do not think this is the kind of society we want.

**Ms. Stoddart:** We agree totally on the principles involved. First, it seems to me that these kinds of intrusive questions are not in the right place.

Second, there is a question with regard to how accurate the responses are when asked in a non-medical context or how helpful they are with regard to preventive measures for people who may have problems.

**Senator Comeau:** When I asked officials about this, they said that when investigators go into the community to follow up on these questions, they will not advise the person's neighbours why they are asking questions on the subject.

How can one go into a small rural community, where there are sometimes a lot of rifles, and ask questions about someone's mental state or whether one has recently left a relationship? I am not sure whether one would want to put it in writing if they have left a relationship. One's spouse might not be happy to hear that you have recently left a relationship when they find out after being asked questions on these documents.

These are not the kinds of things that should be happening in our society, and I would be looking for a champion of that opinion.

[*Translation*]

**Senator De Bané:** Mr. Marleau and I arrived in Parliament at around the same time. He quickly earned everyone's trust with his efficient work and gained the trust of people in all of Parliament. I wish to express my friendship and esteem for you, Mr. Marleau.

I would like you to know, Ms. Stoddart, how favourably impressed I was with the quality of your exchanges with my colleagues. Your analytical abilities are extraordinary. I was greatly impressed. I can readily understand why the selection panel decided on you after interviewing a number of candidates.

The matter of privacy, what a U.S. Supreme Court judge called "the right to be left alone," is a fundamental right, in my opinion, as is the right to express oneself and make one's convictions known.

[*English*]

The right to be left alone is a fundamental right, and to me a fundamental right means a right that cannot be dissociated from human dignity. To undress a person or to divulge his secrets is exactly the same humiliating thing.

I would be very interested to hear, in a few words, your convictions about the right of privacy.

• (1510)

Let us put aside the legislation as it stands in our country or any other. Philosophically, where do you stand on the issue of the right of a person to be left alone?

When I tell you that, I am thinking about the Web site <http://www.411.ca>. I go there, I enter your phone number, I am given your name and your address. Then they ask if I am a classmate of so and so. Do you want to send him flowers? Do you want to know his criminal record? Do you want to know his credit rating? They have everything there. For each question you must pay so much with your Visa credit card. There is no more the right to be left alone. You can "Google" everyone in this room and find out references and what is said about that person.

That right is the other side of the coin for me of the right to shout my convictions. When I want to be left alone today, I have that less and less. I would love to hear your convictions, your philosophy and forget about the legislation in Canada or other countries. Where do you stand on that issue of the right to be left alone?

[*Translation*]

**Ms. Stoddart:** That is a right and a value on which I have placed great importance in my private life. I am a rather private person and keep my private life to myself. You want to hear about values, rather than legislation.

The definition of "privacy" you cited is, I believe, from Oliver Wendell-Holmes.

There are many others I cannot quote by heart. One important point when we discuss the philosophy of privacy is that this is a value that evolves over time, shaped by our life experiences, our position in society, our present and past perspective, and so on.

There are not, I would think, any definitions of "privacy rights" that are not malleable.

**Senator De Bané:** Do I have the right to know everything about you? I think not.

**Ms. Stoddart:** No, but in certain circumstances, in keeping with the malleability of the concept I have referred to, you may have the right to know certain things. That is where our role lies. Any Privacy Commissioner's role is to advise you, and your role as law makers is to say: "Under what exceptional circumstances would I allow certain information about someone to be made known in connection with matters of public order, in connection with vulnerable individuals such as children, and so on?" There are exceptions.

Currently, privacy is rooted in the evolution of this right with respect to other aspects of the way we live in society, which, for lawyers, is governed by laws. You mentioned people doing searches on others on the Internet. That is interesting, since the Internet has been around for barely 10 years. Initially, people thought the Internet was amazing and a sign of total freedom. Everyone surfs the Internet; it exists on a separate plane, outside governments. There is a growing need to regulate the Internet, in order to avoid the worst excesses in terms of infringement on privacy.

An international organization is considering this, and UNESCO and the United Nations will soon examine this issue. The adverse effects are no longer within our control, with what you said.

**The Chairman:** I simply want to remind you that there are 10 senators who wish to ask questions and there are only 45 minutes remaining.

[*English*]

**Senator Andreychuk:** I wish to echo all of the well-deserved praise that Mr. Marleau is receiving and ask him a question before I go to Ms. Stoddart.

The first Privacy Commissioner, Mr. Phillips, was before my time, but he was proposed and politicized in the process of the election — and unjustifiably so, since he held the office commendably. The second Privacy Commissioner was also politicized, and those who pointed out difficulties have now been vindicated while the rest of us who voted for him have had to reflect on whether or not we did our jobs properly.

We are now at the third process. With your experience, I am not sure whether you had knowledge of how the first two Privacy Commissioners were appointed through the process of Parliament, and how this process is different and, we hope, better. Could you comment? Do you think it is a stronger process in regard to the selection committee and what the House has done and what we are doing? Would you care to comment in a general way from the safe distance that you have from the House?

**Mr. Marleau:** Thank you, senator; I feel free to comment.

I am not aware in detail of the processes within the Privy Council Office or the Prime Minister's Office of the appointments of either Mr. Phillips or Mr. Radwanski. I am aware of the

parliamentary process, which was more open and transparent. As a matter of interest, I read some of the transcripts over the summer.

What was different this time is that I took the initiative to convince the Government House Leader that there was an urgency to proceed with an appointment, given the fact that I was intending to leave in December and felt deeply that the office could not deal with another interim commissioner, and that the best candidate, given the time and the means, should be recruited.

What was different this time is that I participated in the drafting of the selection criteria. I also participated in the drafting of the questions. I also participated in the interview process. I also added the name of three provincial commissioners to the list, not as my preferred candidates but because I felt that there was a community, professional practitioners there who ought to be considered; two were considered, one withdrew.

What was different this time, if I can say this as your officer — although I was not confirmed by the Senate, but as a parliamentary officer — I participated in the selection process. It is unusual for the outgoing commissioner to participate in the selection of the incoming commissioner. I would not recommend that as being the magic formula. However, the Senate and the House of Commons may want to consider their input on confirming the selection criteria, if not participation on the selection panel, certainly confirming its profile or composition. It may not necessarily be someone from Parliament, but perhaps someone Parliament might designate to participate. By the time you get to this stage, you have a reasonable assurance that some of those more bureaucratic — if I may put it that way — process issues have been addressed with your interests in mind.

**Senator Andreychuk:** The overwhelming preoccupation has been to ensure that we are doing our job, ultimately. This appointment has come too quickly, but I think, in an effort to give the kind of support and transparency to the professionalism of the job, we require more guidelines and a process that assures us that we have done our homework. I thank you for pointing us in the right direction.

Ms. Stoddart, you do come with a professional history and credibility for this office. No doubt, as with Mr. Marleau, the instant he took the position he gave back credibility, and I hope that that will continue. Your record certainly speaks to the fact that we should have every confidence in you to do that.

In observing the Privacy Commissioner throughout the entire anti-terrorism time, I came to the conclusion that we are entering different times. We heard comments of a generic nature from the Privacy Commissioner, speaking to Parliament or to the people of Canada, indicating privacy concerns which were quickly translated into either a defence by the political system or an opposition by the political system to particular sections in legislation.

• (1520)

I thought, perhaps, it was just a one-off. However, it would appear to me that the trap that the next Privacy Commissioner might find herself in is in the fact that she will be called upon either to defend government legislation in the making or to oppose it. That gives me some concern because it will involve stepping beyond the generic and into the specific, which would compromise the commissioner's duty to all citizens, if I may use that phrase. I say that because the commissioner would be taking one side or the other at a crucial time when, in essence, it is often a political debate and not a legal one.

If you have reflected on that, how would you propose to deal with it?

**Ms. Stoddart:** Honourable senators, I have not reflected on those details in the context of the present position. However, this is something that I do in the position I now hold in Quebec. When the National Assembly is sitting, it is something I do almost every week or two, certainly every month, when we have commission meetings. I am very used to that position. I think you said it went against the public good, senator.

**Senator Andreychuk:** I did not mean it was the public good. The point is that when you get to a point of debate in the House of Commons or the Senate and you are called as a witness, you can appreciate there is a defence of legislation and there is a critique of it. Once you give your advice, you seem to have tipped your influence to one side or the other.

Given the fact that you are serving all Canadians, that can sometimes be misinterpreted and, in fact, it can politicize you. I am concerned about that more and more on these pieces of legislation, and I think we will see more of them because of, as you said, the world in which we are now living.

**Ms. Stoddart:** One expects from a Privacy Commissioner that you take your position irrespective of the political gains, losses or consequences. Your role is to advise Parliament on the privacy implications of a piece of legislation. What people do with this and how they use it is something over which you have no control.

It should not at all change or shape your judgment. You have to give the best opinion that you have, given the context of the legislation and the way it would be applied.

As I have said, this is something that I have some experience in doing. It does not necessarily win one stars. It is often difficult for the public to understand the position.

For example, in Quebec, we took a position against a plan to change the health card system to a smart card system. We are for smart cards, but we were against the fact that the smart card would have been linked with new centralized databases on people's personal health information. We said the project was not

ready to go forward. There was a lot of criticism about our position because it seemed to be good for the health of Quebecers, et cetera.

In the end, we were not alone and the project was withdrawn to be considered more carefully.

Personally, I have been in the position where I have had to take an unpopular position. Some editorialists criticized us strongly, saying that we will never have a modern health system if we take these kinds of positions. We said, "No, you are going too fast. You have to think about how you protect privacy when you are redoing the design of health information."

**Senator Andreychuk:** In light of the time, I wish to raise other issues to which I do not expect answers.

I refer to our duties involving international conventions and treaties that have privacy terms and conditions in them and how they weigh on today's situation in Canada and the proportionality to the right to privacy and freedoms versus the right to security. I believe that proportionality is important.

With that, I trust the dialogue on fundamentals will continue, including the one raised by Senator De Bané, where privacy is very much a cultural issue. As a historian, that may be an interesting perspective to pursue later.

**Senator Moore:** I have one question for you, Ms. Stoddart. Is there anything in your personal history, financial or otherwise, or do you anticipate anything that would bring negative reflection upon the office that you seek and the people that you would serve or that would inhibit you or detract from your diligent performance of your duties?

**Ms. Stoddart:** No, honourable senators, I do not think there is.

[Translation]

**Senator Prud'homme:** I want to wish you a warm welcome. I also want to be quite merciless in thanking Mr. Marleau, whom I know well, for having cleaned the Augean stables and assured the entire staff, to whom I am quite attached, that, finally, they will be able to speak freely, to the best of their abilities.

I have always supported Mr. Philips. I was a Liberal. I defended him and I voted for him. I will not apologize for saying that I vehemently defended my position here by opposing Mr. Radwanski's appointment and, contrary to the custom of being nice and agreeing to the motion on division, I forced a vote under the *Rules of the Senate*. I had my reasons. I will not list these reasons to you, but I will give you the record of his appearance before the Senate. This will assist you, I hope, in your work.

[ Senator Andreychuk ]

I am sure that Senators Kinsella, Lynch-Staunton and others regret the haste with which we have received you today. I am rather sorry, too, because when the previous commissioner came here during consideration in Committee of the Whole, there was a raised seat, and the television crews were here. You know, Madame, that the Senate is often criticized, but more than half the senators, with only an hour's notice, have come here on a Friday afternoon to show their interest. I am sorry that it has all happened so quickly; we could have had television — although on the previous occasion, some of you will remember, they ran out of video tape just as I was talking. Imagine that!

[English]

Do honourable senators remember that the cameramen ran out of film just as I was about to get back to Mr. Radwanski? It was a strange coincidence. At any rate, I survived.

[Translation]

Mr. Marleau, I have had great confidence in you for 30 years as a member of Parliament. We are in the midst of drafting an ethics code for the Senate. Take a well-deserved rest, and we will probably be able to call you back later to serve the nation.

• (1530)

As for you, Ms. Stoddart, my colleagues and myself will be at your disposal. I implore you to restore pride, as Mr. Marleau has successfully done with the staff, to put an end to this reign of terror. I have been in Parliament for 40 years, Madame, and I can get whatever I need from the staff. I had complaints, but no one to listen to me because I had opposed his appointment. I am confident that your term will be a great success. If I can be of assistance to you in any way, I will be at your disposal.

I wish you the best of luck.

[English]

**Senator Baker:** I want to congratulate you on your remarkable career so far. Quite remarkable, I would say, from reading your qualifications.

My one question relates to Senator Beaudoin's original remark at the beginning and then the follow-up remark that you made concerning privacy as it relates to the Charter and to the common law, and the trend that appears to be happening with changes to the Criminal Code over the years.

Senator De Bané was remarking about being able to have your telephone number and find out your address and everything else. Well, a telephone number and an address, and certain other information. Of course, you do not need to have a search warrant to get that information from the telephone company. That has

always been the case. However, over the years, the code has changed to allow, for example, for number recorder warrants to be issued. As you know, normally when the police obtain a search warrant, it is in order to obtain information to ground a criminal charge. That is what they are seeking, and they have reasonable grounds to believe that that information is there. We have seen recent changes to the code in the last two years that indicate to us that one seeks information that will lead to further information, and thus to reasonable grounds.

I think Senator Beaudoin asked you what you think your role is in light of the two changes that are coming to the Criminal Code. One is in response to Enron. That opens up the entire area of search warrants to allow a general warrant, not time-specific, to allow financial institutions to investigate your financial affairs and, of course, report to the person from whom the warranty was issued; in other words, the investigating officer.

Is there an automatic system in place whereby the Department of Justice, when they make major changes to the Criminal Code like that, automatically go to your office to seek an opinion? Would you recommend that? If it is not there, and if you do not recommend it, then how do you see your role in terms of trying to preserve what Senator Beaudoin pointed out, quite correctly, as section 7, being fundamental justice, and sections 8 and 9 on unreasonable search and seizure, under the Charter?

**Ms. Stoddart:** Thank you for your questions, honourable senator. They are critical questions.

I cannot testify about the relationship now between the Department of Justice and the Privacy Commission; I will ask Mr. Marleau to continue on about that. However, it seems to me that an important role of the Privacy Commissioner is to be able to act in time to form a well-documented, well-researched opinion on privacy implications of important legislation. This is certainly a role that I am used to.

You gave some examples of issues of police power concerning people's financial status and so on. As the president of the Quebec commission, I took a very strong stand on the sharing of information between the Sûreté du Québec and Revenue Quebec and said that this difference between civil powers and criminal law powers is fundamental in our democracy. This separation should not be breached easily. Because of our representations to the Quebec National Assembly, we now have something in the Quebec Revenue Act that says that civil servants cannot give interesting information to the police and states that this must pass before the equivalent of a judge or a justice of the peace. Not that we do not think the people in Revenue Quebec may not see all kinds of relevant things going before them, but that we cannot have a society that is one continuum between police powers and simply going about your daily business. This is what you do when you fill out your income tax.

I am not familiar with those particular changes in the Criminal Code, but we must remember that often the problem is not that we do not have enough powers in society; the problem is that we do not use our powers. The question is: What powers do we have that we should have used properly, rather than seeking to give ourselves new powers? I think Mr. Marleau can inform you further about the present relationship.

**Mr. Marleau:** Honourable senators, there was a policy established in 2000 by Treasury Board whereby all major new programs, particularly those which deal with the traffic of personal information, are submitted for review in their sort of genesis form to the Privacy Commissioner's Office for privacy impact assessment. My predecessor did not attach the same value to that policy as I did going in, and I will try and indoctrinate, if I can, my successor in the briefings.

This PIA formula is a positive new development. It is one for which I commended the government in my annual report. I recommended to the Government Operations and Estimates Committee in the House of Commons that it be made part of the law; that is, that the Privacy Act be amended and that it be made a requirement for the government to first consult the office on these initiatives so that we can, early in the process, identify the privacy concerns and allow the government to address them. We may not agree all of the time, but having that dialogue in the developmental stage of legislation is far more useful and far less antagonistic than some of the issues that Senator Andreychuk underlined. Sometimes it is so late that the Privacy Commissioner must take a strong public position in order to be understood. If the Senate wants to champion that part, I would look favourably on any initiative by this honourable chamber to turn that policy, which is the whim of the government of the day, into legislative requirement.

[*Translation*]

**The Chairman:** Ms. Stoddart, Mr. Marleau, on behalf of all honourable senators, I wish to thank you for appearing before us. We may have the pleasure of seeing you again.

[*English*]

**Senator Carstairs:** I move, seconded by the Honourable Senator Robichaud, that the motion be adopted.

**The Chairman:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

**The Chairman:** The motion is carried.

Is it agreed that I rise and report?

[ Ms. Stoddart ]

**Hon. Senators:** Agreed.

[*Translation*]

The sitting of the Senate resumed.

#### REPORT OF COMMITTEE OF THE WHOLE ADOPTED

**Hon. Lucie Pépin:** Honourable senators, the Committee of the Whole has adopted the motion referred to it with respect to the appointment of Ms. Jennifer Stoddart as Privacy Commissioner for a seven-year term, and has asked me to report that the committee has completed its proceedings.

• (1540)

[*English*]

**The Hon. the Speaker:** Is it agreed, honourable senators, that the report of the Committee of the Whole be adopted?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

#### PARLIAMENT OF CANADA ACT

#### BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the third reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence, as amended.

**The Hon. the Speaker:** Is the house ready for the question?

**Hon. Senators:** Question!

**The Hon. the Speaker:** Honourable senators, it was moved by the Honourable Senator Carstairs, seconded by the Honourable Senator Robichaud, that this bill be read the third time now, as amended. Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**An Hon. Senator:** On division.

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



[Translation]

### ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

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

That the Senate do now adjourn until Tuesday, November 18, 2003, at 2 p.m.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

[English]

### ASSISTED HUMAN REPRODUCTION BILL

#### SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Morin, seconded by the Honourable Senator Gauthier, for the second reading of Bill C-13, respecting assisted human reproduction.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I rise to participate in the debate at second reading on Bill C-13, the Assisted Human Reproduction Bill.

Honourable senators, we have had important contributions in this debate so far at second reading from several senators, including the proponent of the bill, our colleague Senator Morin, and the opposition critic, Senator Keon. We are particularly well situated to have such fine scientists and physicians in the person of the two senators who have spoken to the bill, as well as the other senators who have spoken.

Given that second reading debate is on the principle of a bill, it is important that we attempt to identify and comment on the principle or principles that underlie this legislative initiative of the government. There is a section of the bill, indeed, entitled "principles," but sometimes it is necessary to get behind those principles that are articulated in a piece of legislation.

If the principle is that contemporary society ought to use all available biotechnical techniques and all available knowledge in the field of biotechnology to support Canadian families in their desire to found and raise children, then I believe that this is a noble and laudable principle.

However, if the principle of the bill, upon analysis, is to promote research on cross-species genetic engineering, then, almost in an *a priori* fashion, I would, reject such a principle as offensive to the dignity and worth of the human person.

Honourable senators, if, however, the principle of the bill is to set in place for Canada a legislative framework and a legislative protocol, together with the appropriate infrastructure that would facilitate ongoing research for the betterment of our families in Canada, then we might well see this initiative as being supportive of the dignity and inestimable value of the human person.

In an effort to discern the principles contained in this bill, I find myself challenged by the very broad range of what many would describe as cutting-edge, biotechnologically-based issues contained in this bill, one way or the other. When faced with this challenge in the examination of proposed legislation, I have to ask myself the question: Why has the government decided to put so many different issues into the same bill?

One might, from that, inquire of the government whether a different approach might have been better — namely, to put certain issues in the bill that have a common basis, and in a separate bill, other issues. I put that forward as a question.

This, in turn, raises, at least for me, the matter of an issue of legislative process, as well as the substance of the bill that is before us. In terms of legislative process, it will be important for all honourable senators to know whether the government will use its significant majority in the Senate to permit this chamber to conduct a thorough examination of Bill C-13 at each stage, or whether the government will use its heavy majority and be driven by a fixed schedule to bring closure to our work.

I am hopeful that we will have sufficient time to do the necessary study in detail, for without significant time we would be unable to canvass, quite frankly, the many principles that are associated with this bill; principles which, on the one hand, relate to impressive advancements in biotechnology and, on the other hand, principles that speak to our ethical analysis concerning the dignity and worth of the human person.

• (1550)

In terms of substance, the part of the bill that bans human cloning rests on a position shared by so many Canadians. In that same clause, clause 5 of the bill, it prohibits, quite appropriately in my judgment, the mixing of human genetic material with material from other species for the creation of some form of human hybrid.

As I have indicated, I find this to be a solid legislative measure, and one which rests on a principle that I would consider to be bedrock.

We must be guided in our work by prudence. We will be taxing whatever wisdom we can muster to guide us in the examination of all of the proposed provisions in the bill, dealing with a variety of different issues. We will be required to probe issues that will warrant many different approaches in terms of ethical analysis.

It will be important to explore those philosophical and theological approaches with openness, seeking to learn what we can through the insights of the various faith traditions in our country. At the same time, we must be generous in our approach to the marvels that the world of science places before us in the 21st century.

I do not wish to pre-judge anything at this stage, but I have canvassed and sought counsel from a number of bioethicists across Canada, as well as a number of scientists in the university environment and in reproductive clinics and physicians. I am impressed by the desire, which I think is the common desire of all, to have a legislative framework that will allow Canadian families to receive the kind of modern assistance that they can receive — and that should be available to the Canadian family. At the same time, we must find the protocol that is appropriate so that science can continue to probe the new areas of knowledge that are for the common good. I believe that all of this can be done and, at the same time, be respectful of the value economies of the great faith traditions in our land.

In many ways, the consensus that I was gathering from those with whom I consulted was that, on balance, this is probably a pretty good direction for a legislative framework. Notwithstanding that, in the particular, serious concerns have been expressed by many.

In trying to understand that, I am reminded of the significant impact that the world community was successful in making when it came together on December 10, 1948, over more than half a century ago, and agreed on a universal standard of human rights, based upon the dignity and worth of the human person. I speak, of course, of the Universal Declaration of Human Rights.

However, honourable senators, it is instructive for us to recall that, although the world community was able to come together and agree on a legislative framework at the international level articulating human rights, when UNESCO brought together the great thinkers of the world, from all the different schools of thought, all the different legal systems, while they accepted the rights that were articulated in the legislative framework, they were not able to agree upon the same reason why the various rights were rights.

We might very well find ourselves, as legislators, in coming up with a piece of public legislation that will meet the objectives of the common good and the public interest, that there may be a variety of different approaches to justification. We may find agreement on the statute, but there may be a variety of different reasons that people hold as to why it is good legislation.

**The Hon. the Speaker:** Is the house ready for the question?

**Some Hon. Senators:** Question!

**The Hon. the Speaker:** It was moved by the Honourable Senator Morin, seconded by the Honourable Senator Gauthier, that this bill be read the second time now. Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Carstairs, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

## THE SENATE

### TRIBUTE ON RETIREMENT OF MACE BEARER

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as we are getting very close to four o'clock, when we must adjourn, on behalf of all members of this chamber, I want to pay tribute to a very special participant in this chamber, although he is not one of the senators. That, of course, is our Mace Bearer, Richard, Dick, Logan, who has announced that, as of January, he will no longer be our Mace Bearer in this place. I want to thank him for his excellent work, and for the demeanour in which he conducts himself.

Palliative care is near and dear to my heart, and I was particularly touched when he told me that he wanted to have more time to devote to the St. Lazarus Society, which has focused on palliative care. He goes with our love, affection, best wishes and encouragement to continue to do good work for all the people of Canada — and absolutely, to find some time to spend with his grandchildren.

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

**The Hon. the Speaker:** Honourable senators, I know it is not in order, but I would like to be permitted to associate myself with the remarks of Senator Carstairs.

Thank you, Richard. You have been a wonderful Mace Bearer and supporter.

Honourable senators, it being four o'clock, pursuant to rule 6(2) of our rules, I declare that the motion to adjourn has been moved and adopted.

The Senate adjourned until Tuesday, November 18, 2003, at 2 p.m.

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*The Thirty-seventh Parliament was prorogued by Proclamation on Wednesday, November 12, 2003*

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**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(2nd Session, 37th Parliament)**  
**Friday, November 7, 2003**

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-2	An Act to implement an agreement, conventions and protocols concluded between Canada and Kuwait, Mongolia, the United Arab Emirates, Moldova, Norway, Belgium and Italy for the avoidance of double taxation and the prevention of fiscal evasion and to amend the enacted text of three tax treaties.	02/10/02	02/10/23	Banking, Trade and Commerce	02/10/24	0	02/10/30	02/12/12	24/02
S-13	An Act to amend the Statistics Act	03/02/05	03/02/11	Social Affairs, Science and Technology	03/04/29	0	03/05/27		

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-2	An Act to establish a process for assessing the environmental and socio-economic effects of certain activities in Yukon	03/03/19	03/04/03	Energy, the Environment and Natural Resources	03/05/01	0	03/05/06	03/05/13	7/03
C-3	An Act to amend the Canada Pension Plan and the Canada Pension Plan Investment Board Act	03/02/26	03/03/25	Banking, Trade and Commerce	03/03/27	0	03/04/01	03/04/03	5/03
C-4	An Act to amend the Nuclear Safety and Control Act	02/12/10	02/12/12	Energy, the Environment and Natural Resources	03/02/06	0	03/02/12	03/02/13	1/03
C-5	An Act respecting the protection of wildlife species at risk in Canada	02/10/10	02/10/22	Energy, the Environment and Natural Resources	02/12/04	0	02/12/12	02/12/12	29/02
C-6	An Act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts	03/03/19	03/04/02	Aboriginal Peoples	03/06/12 03/10/07	5 –	referred back to Committee 03/09/25  03/10/21 Message from Commons-agree with amendments 03/11/04	03/11/07	23/03
C-8	An Act to protect human health and safety and the environment by regulating products used for the control of pests	02/10/10	02/10/23	Social Affairs, Science and Technology	02/12/10	0	02/12/12	02/12/12	28/02
C-9	An Act to amend the Canadian Environmental Assessment Act	03/05/06	03/05/13	Energy, the Environment and Natural Resources	03/06/04	0	03/06/05	03/06/11	9/03

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-10	An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act	02/10/10	02/11/20	Legal and Constitutional Affairs	02/11/28	Divided Message from Commons concurring with division 03/05/07			
C-10A	An Act to amend the Criminal Code (firearms) and the Firearms Act	–	–	Legal and Constitutional Affairs	02/11/28	0	02/12/03	03/05/13	8/03
C-10B	An Act to amend the Criminal Code (cruelty to animals)	–	–	Legal and Constitutional Affairs	03/05/15	5	03/05/29 Message from Commons-agree with two amendments, disagree with two, and amend one 03/06/09 Referred to committee 03/06/11 Reported 03/06/12 Report adopted (insist on one, replace one, amend one) 03/06/19 Message from Commons-disagree with Senate's amendments 03/09/30 Referred to committee 03/11/06		
C-11	An Act to amend the Copyright Act	02/10/10	02/10/30	Social Affairs, Science and Technology	02/12/05	0	02/12/09	02/12/12	26/02
C-12	An Act to promote physical activity and sport	02/10/10	02/10/23	Social Affairs, Science and Technology	02/11/21	0 + 1 at 3 <sup>rd</sup> 02/12/04 2 at 3 <sup>rd</sup> 03/02/04	03/02/04	03/03/19	2/03
C-13	An Act respecting assisted human reproduction	03/10/28	03/11/07	Social Affairs, Science and Technology					

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-14	An Act providing for controls on the export, import or transit across Canada of rough diamonds and for a certification scheme for their export in order to meet Canada's obligations under the Kimberley Process	02/11/19	02/11/26	Energy, the Environment and Natural Resources	02/12/04	0	02/12/05	02/12/12	25/02
C-15	An Act to amend the Lobbyists Registration Act	03/03/19	03/04/03	Rules, Procedures and the Rights of Parliament	03/05/14	1	03/05/28 Message from Commons-agree with amendment 03/06/09	03/06/11	10/03
C-17	An Act to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety	03/10/08							
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003	02/12/05	02/12/10	–	–	–	02/12/11	02/12/12	27/02
C-23	An Act respecting the registration of information relating to sex offenders, to amend the Criminal Code and to make consequential amendments to other Acts	03/11/05							
C-24	An Act to amend the Canada Elections Act and the Income Tax Act (political financing)	03/06/11	03/06/16	Legal and Constitutional Affairs	03/06/19	0	03/06/19	03/06/19	19/03
C-25	An Act to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts	03/06/03	03/06/13	National Finance	03/09/18	0	03/11/04	03/11/07	22/03
C-28	An Act to implement certain provisions of the budget tabled in Parliament on February 18, 2003	03/05/27	03/06/04	National Finance	03/06/12	0	03/06/19	03/06/19	15/03
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003	03/03/25	03/03/26	–	–	–	03/03/27	03/03/27	3/03
C-30	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/03/25	03/03/26	–	–	–	03/03/27	03/03/27	4/03
C-31	An Act to amend the Pension Act and the Royal Canadian Mounted Police Superannuation Act	03/06/03	03/06/11	National Security and Defence	03/06/16	0	03/06/17	03/06/19	12/03
C-32	An Act to amend the Criminal Code and other Acts	03/10/30							

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-34	An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence	03/10/02	03/10/27	Rules, Procedures and the Rights of Parliament	03/11/03	0 + 1 at 3 <sup>rd</sup>	03/11/07		
C-35	An Act to amend the National Defence Act (remuneration of military judges)	03/06/13	03/09/18	Legal and Constitutional Affairs					
C-36	An Act to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence	03/10/28	03/11/04	Social Affairs, Science and Technology					
C-37	An Act to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts	03/10/20	03/10/27	Social Affairs, Science and Technology	03/11/05	0	03/11/06	03/11/07	26/03
C-39	An Act to amend the Members of Parliament Retiring Allowances Act and the Parliament of Canada Act	03/06/03	03/06/11	Legal and Constitutional Affairs	03/06/19	0	03/06/19	03/06/19	16/03
C-41	An Act to amend certain Acts	03/10/07	03/10/29	Legal and Constitutional Affairs					
C-42	An Act respecting the protection of the Antarctic Environment	03/06/13	03/09/17	Energy, the Environment and Natural Resources	03/09/18	0	03/10/07	03/10/20	20/03
C-44	An Act to compensate military members injured during service	03/06/13	03/06/13	National Security and Defence	03/06/16	0	03/06/18	03/06/19	14/03
C-45	An Act to amend the Criminal Code (criminal liability of organizations)	03/10/27	03/10/29	Legal and Constitutional Affairs	03/10/30	0	03/10/30	03/11/07	21/03
C-46	An Act to amend the Criminal Code (capital markets fraud and evidence-gathering)	03/11/05							
C-47	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/06/13	03/06/17	–	–	–	03/06/18	03/06/19	13/03
C-48	An Act to amend the Income Tax Act (natural resources)	03/10/22	03/10/27	Banking, Trade and Commerce	03/11/06	0	03/11/07	03/11/07	28/03
C-49	An Act respecting the effective date of the representation order of 2003	03/10/23							
C-50	An Act to amend the statute law in respect of benefits for veterans and the children of deceased veterans	03/10/27	03/10/29	Social Affairs, Science and Technology	03/11/05	0	03/11/06	03/11/07	27/03
C-53	An Act to change the names of certain electoral districts	03/10/23	03/10/29	Legal and Constitutional Affairs					
C-55	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/10/28	03/11/04	–	–	–	03/11/05	03/11/07	25/03

## COMMONS PUBLIC BILLS

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-205	An Act to amend the Statutory Instruments Act (disallowance procedure for regulations)	03/06/16	03/06/19	–	–	–	03/06/19	03/06/19	18/03
C-212	An Act respecting user fees	03/09/30	03/10/22	National Finance					
C-227	An Act respecting a national day of remembrance of the Battle of Vimy Ridge	03/02/25	03/03/26	National Security and Defence	03/04/02	0	03/04/03	03/04/03	6/03
C-249	An Act to amend the Competition Act	03/05/13	03/09/17	Banking, Trade and Commerce					
C-250	An Act to amend the Criminal Code (hate propaganda)	03/09/18							
C-260	An Act to amend the Hazardous Products Act (fire-safe cigarettes)	03/11/03							
C-300	An Act to change the names of certain electoral districts	02/11/19	03/06/03	Legal and Constitutional Affairs					
C-411	An Act to establish Merchant Navy Veterans Day	03/06/12	03/06/17	National Security and Defence	03/06/18	0	03/06/19	03/06/19	17/03
C-459	An Act to establish Holocaust Memorial Day	03/10/21	03/11/03	Committee of the Whole	03/11/03	1	03/11/04 Message from Commons-agree with amendment 03/11/05	03/11/07	24/03

## SENATE PUBLIC BILLS

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-3	An Act to amend the National Anthem Act to include all Canadians (Sen. Poy)	02/10/02	03/06/10	Social Affairs, Science and Technology	03/10/23	0			
S-4	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	02/10/02							
S-5	An Act respecting a National Acadian Day (Sen. Comeau)	02/10/02	02/10/08	Legal and Constitutional Affairs	03/06/03	2	03/06/05	03/06/19	11/03
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	02/10/03							
S-7	An Act to protect heritage lighthouses (Sen. Forrestall)	02/10/08	03/02/25	Social Affairs, Science and Technology	03/06/19	0	03/09/24		
S-8	An Act to amend the Broadcasting Act (Sen. Kinsella)	02/10/09	02/10/24	Transport and Communications	03/03/20	0	03/04/02		

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S-9	An Act to honour Louis Riel and the Metis People (Sen. Chalifoux)	02/10/23	03/05/06	Legal and Constitutional Affairs					
S-10	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	02/10/31	03/02/25	Energy, the Environment and Natural Resources	03/09/18	0	03/11/04		
S-11	An Act to amend the Official Languages Act (promotion of English and French) (Sen. Gauthier)	02/12/10	03/05/07	Official Languages	03/11/04	0			
S-12	An Act to repeal legislation that has not been brought into force within ten years of receiving royal assent (Sen. Banks)	02/12/11	03/02/27	Legal and Constitutional Affairs					
S-14	An Act to amend the National Anthem Act to reflect the linguistic duality of Canada (Sen. Kinsella)	03/02/11	03/06/17	Official Languages	03/11/05	0			
S-15	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	03/02/13	Dropped from Order Paper pursuant to Rule 27(3) 03/06/05						
S-16	An Act to amend the Constitution Act, 1867 and the Parliament of Canada Act (Speakership of the Senate) (Sen. Oliver)	03/03/18							
S-17	An Act respecting the Canadian International Development Agency, to provide in particular for its continuation, governance, administration and accountability (Sen. Bolduc)	03/03/25	03/06/19	National Finance					
S-18	An Act to amend the Criminal Code (lottery schemes) (Sen. Lapointe)	03/04/02	03/10/21	Legal and Constitutional Affairs					
S-20	An Act to amend the Copyright Act (Sen. Day)	03/05/15	03/10/07	Banking, Trade and Commerce (withdrawn) 03/10/08 Social Affairs, Science and Technology					
S-22	An Act respecting America Day (Sen. Grafstein)	03/09/16							
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**PRIVATE BILLS**

<b>No.</b>	<b>Title</b>	<b>1st</b>	<b>2nd</b>	<b>Committee</b>	<b>Report</b>	<b>Amend</b>	<b>3rd</b>	<b>R.A.</b>	<b>Chap.</b>
S-19	An Act respecting Scouts Canada (Sen. Di Nino)	03/05/14	03/06/09	Legal and Constitutional Affairs					
S-21	An Act to amalgamate the Canadian Association of Insurance and Financial Advisors and The Canadian Association of Financial Planners under the name The Financial Advisors Association of Canada (Sen. Kirby)	03/06/03	03/06/09	Banking, Trade and Commerce	03/10/30	1	03/11/04	03/11/07	

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