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(HANSARD)

Monday, March 29, 2004

THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Monday, March 29, 2004

The Senate met at 8 p.m., the Speaker in the Chair.

Prayers.

[*Translation*]

ROYAL ASSENT

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

RIDEAU HALL

March 26, 2004

Mr. Speaker,

I have the honour to inform you that the Right Honourable Adrienne Clarkson, Governor General of Canada, signified royal assent by written declaration to the bills listed in the Schedule to this letter on the 26th day of March, 2004 at 11:01 a.m.

Yours sincerely,

Barbara Uteck
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

Bills Assented to Friday, March 26, 2004:

An Act respecting assisted human reproduction and related research (*Bill C-6, Chapter 2, 2004*)

An Act to amend the Criminal Code (capital markets fraud and evidence-gathering) (*Bill C-13, Chapter 3, 2004*)

An Act respecting equalization and authorizing the Minister of Finance to make certain payments related to health (*Bill C-18, Chapter 4, 2004*)

[*English*]

SENATORS' STATEMENTS

TRIBUTES

THE HONOURABLE GÉRALD-A. BEAUDOIN

The Hon. the Speaker: Honourable senators, I have received a letter from the Leader of the Opposition in the Senate, the Honourable Senator Lynch-Staunton, pursuant to rule 22(10), requesting that the time provided for consideration of Senators' Statements be extended today for the purpose of paying tribute to the Honourable Senator Beaudoin, who will be retiring April 15, 2004.

[*Translation*]

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, Senator Beaudoin is one of the four Quebecers who were appointed to the Senate in the spirit of the Meech Lake Accord, in other words, in consultation with the premier of their province. The success of this formula is evident when we look at the names of our colleagues who took office at the same time he did: Senators Bolduc, Chaput-Rolland and Poitras. We were sorry to say goodbye to each member of this veritable pantheon, and we will be just as sorry to say goodbye to our friend Gérald.

His departure will leave a void that will be most difficult to fill. He will be missed for his knowledge of the law, especially constitutional law, and also for the way he shared that knowledge with his colleagues, regardless of their political affiliation. He was an experienced professor and I often had the impression, both in this house and in committee, that he was addressing students who were unruly at first, but whose attention was soon captured by his clarity of thought and his ability to explain the most complicated rulings.

Very few senators have brought such a wealth of experience to the Senate. Lawyer, counsel for the Department of Justice and the House of Commons, law professor, dean and author, he quickly became co-chair of two special committees on the Constitution and was very active on numerous Senate committees.

[*English*]

As a caucus member, Senator Beaudoin was not at first always at ease as he found it difficult to understand why a bill that in his mind deserved support had, as an opposition member, to be opposed. Being an academic, he professed being above the fray, but he always — nearly always — abided by caucus consensus.

When Senator Beaudoin became animated, his favourite expressions were "in my opinion," and "on the one hand and on the other hand." I can say that in everyone's opinion, and on both hands, Senator Beaudoin's remarkable intellect, profound knowledge of the law and an ability to explain the most complex of legalities in the most clear fashion will be sorely missed, as will his engaging personality and strong attachment to the parliamentary system that has benefitted all those who have had the privilege to sit with him.

[*Translation*]

Many thanks, Gérald, for your exceptional contribution to the parliamentary process. Best wishes to you and your charming wife Renée on the eve of a well-deserved retirement. You will be sorely missed.

[*English*]

Hon. Jack Austin (Leader of the Government): Honourable senators, when I first saw Senator Beaudoin's name in writing, it had so many letters after it that I thought the computer had gone awry and had printed the entire alphabet. By which, of course, I mean that he has received so many honours, distinctions, honorary degrees and other awards that there are more letters after his name than there are in his name.

Today I should like to express my admiration for the accomplishments of Senator Gérald Beaudoin, a man whose prodigious career in law and politics is difficult to distil in a few words. He is an Officer of the Order of Canada, a fellow of the Royal Society of Canada and professor and dean of civil law. Senator Beaudoin is also a prolific writer on constitutional matters and on our Canadian Charter of Rights and Freedoms. His books serve as seminal references in our law libraries, and two of his texts are currently in their third edition. The latest edition of *La Constitution du Canada* was launched with great celebration in our Senate foyer earlier tonight.

● (2010)

He has received numerous honours, both national and international, in recognition of his expertise in law and its implications for how we govern ourselves. Among the most notable are the Ramon John Hnatyshyn Award for Law, 1997, and the Walter S. Tarnopolsky Human Rights Award, two years ago, both of which recognize his contribution to the advancement of law.

[*Translation*]

Since his appointment to the Senate he has been an active participant on committees and has co-written a number of reports. The report of the Special Joint Committee on a Renewed Canada was an exceptional achievement, due in no small measure to Senator Beaudoin's leadership, even though he became co-chair only two months before the deadline.

The report covered Native issues, Senate reform, intergovernmental relations and many other subjects that we continue to discuss in our parliamentary debates. His impact became obvious when a number of his sections found their way into the Charlottetown Accord.

Senator Beaudoin's reputation as an expert in constitutional law has had on impact on my current office since my assistant, Ms. Deborah Palumbo, contributed to one of the texts in the anthology, *The Challenges of Constitutionalism: Essays in Honour of Gérald-A Beaudoin,* published two years ago.

In the foreword to this book, Pierre Thibault, a long-time assistant to the senator, describes constitutionalism as "the blossoming of a culture of rights and freedoms."

I will quote Mr. Thibault's words, because it is pure Beaudoin:

> Belief in the primacy of a constitution as an essential tool for defining, protecting and preserving the rights of Canadians within their young democracy.

Teachings like that are the legacy Senator Beaudoin will be leaving for our judicial system, our Parliament, the Senate and Canadians of the future.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise this evening to pay tribute to our friend and colleague, the Honourable Senator Gérald Beaudoin, and to speak of the importance of the law itself for society, because he has made an invaluable contribution to Canadian and international law.

Honourable senators, it was Saint Thomas Aquinas who defined the law in his *Summum Theologica*, in item 4, question 90, of the *Prima Secunda*: "a dictate of practical reason, ordered toward the common good, made by one who has care for the community, and promulgated."

[*English*]

These essential elements of law are equally descriptive of Gérald Beaudoin, a jurist "par excellence." Reason, the rule of law and the common good are always characteristic of his analysis of legal questions. In many ways, Senator Beaudoin's explanations of different sides of an issue expressed, as my colleague Senator Lynch-Staunton has pointed out, "on the one hand" and then "on the other hand" resembled the approach of St. Thomas, who would use the question-and-answer technique in laying open an issue.

Honourable senators, our colleague has been a beacon for this chamber as we navigated the shoals of constitutional matters. It was always comforting when he would be able to conclude with a precision and univocal judgment that a Charter determination on an issue was "clear-cut."

[*Translation*]

This chamber and our country have been well served by this man of law, this teacher, this dean of law and this distinguished senator. We will all remember his exceptional contribution and, particularly, his unique teaching: laws must be useful to the common good and any law that is *a fortiori* useless or harmful to the community is not a real law.

Like Thomas Jefferson, Gérald Beaudoin recognizes that we have a right to freedom and, like Jefferson in his time, Senator Beaudoin has, in our time, had a great influence when it comes to the protection and promotion of our freedom.

Hon. Jean-Robert Gauthier: Honourable senators, I cannot claim to do justice to the impressive career of our colleague and friend Senator Gérald Beaudoin.

Mr. Beaudoin is a prominent expert in legal and constitutional affairs. He is known across Canada and he is one of the most respected jurists in this country. Gérald has always vigorously defended the equal status of Canada's two official languages.

I have known the professor, the dean, the author and the counsel. In short, he is a Canadian who is accessible, respectful of cultural freedom and, above all, a champion of our linguistic duality.

In the 1960s and 1970s, I was very involved in education in the Ottawa region as a school board trustee. I was looking for support to help us explain to the majority that official language minority communities should manage their own French-language schools, in Ontario and elsewhere. In 1966, a study done by OISE, the Ontario Institute for Studies in Education, showed that 84 per cent of French Canadians living in Ontario dropped out of school before completing grade 10.

I had the pleasure of meeting Senator Beaudoin at the University of Ottawa. I believe he was the dean of the faculty of law and he had just published a book. He encouraged me and he gave me good advice. He said: "Above all, do not give up."

Senator Beaudoin has always supported initiatives to improve the lot of linguistic and cultural minorities. While he could be critical at times, he always knew how to find the necessary compromise to make peace and advance issues.

I am pleased to have this opportunity today to speak of my friend Gérald Beaudoin. He will soon be facing a new challenge, a well-deserved retirement that will likely be as busy as it is deserved. I will be following him in six months, but Gérald will not stop writing, and I will not stop talking.

Have a great retirement, my dear Gérald!

Hon. Lowell Murray: Honourable senators, long before meeting Professor Gérald Beaudoin personally, I was well aware of his brilliant reputation as an intellectual, a constitutionalist and an author. Having assumed certain responsibilities in the area of federal-provincial relations, I was anxious to meet him and, if possible to draw upon his vast knowledge on the subject. On January 20, 1987, he accepted my invitation to lunch with me in the parliamentary restaurant and there began a dialogue and teacher-student relationship that has lasted to this day and will, I hope, continue.

• (2020)

On January 27, a week after that conversation, Professor Beaudoin sent me a letter in order, as he put it, to put down on paper:

> ... a few proposals relating to the hypotheses we discussed last Tuesday.

He then went on to address, with his customary rigour and clarity, six proposals aimed at the abolition of our Senate, or at the least its radical reform. These subversive ruminations came to an abrupt end with Professor Beaudoin's appointment to that Senate 20 months later.

[*English*]

As Lyndon Johnson and Brian Mulroney are supposed to have said, "Better to have him inside the tent looking out than outside the tent looking in."

[*Translation*]

Nevertheless, I am absolutely certain today that Senator Beaudoin is as embarrassed at having made such proposals as I am of having solicited them. When he was appointed to the Senate, Professor Beaudoin, having never had any party affiliations, spoke of his concern, hesitation even, about the invitation he had received to join the Progressive Conservative caucus. He was even contemplating sitting as an independent.

Fortunately, I managed to persuade him to come onside with the Progressive Conservatives, and to ensure that it was a profitable experience, we had to reverse the teacher-student relationship that had characterized our constitutional discussions.

What an extraordinary and motivated student he became. I particularly remember the great frustration in the Liberal government when Senator Beaudoin managed, on two occasions, to derail its attempts to manipulate the electoral map. Today, if he is not seen as a partisan, he is universally recognized as a convinced and convincing activist.

Senator Beaudoin's retirement means that the Senate is losing one of its illustrious parliamentarians. I sincerely thank him for his contribution to Parliament and to Canada over the past 17 years.

Hon. Viola Léger: Honourable senators, during my brief time here in the Senate, I have had the opportunity to meet some extraordinary people, one of whom is without a doubt Senator Beaudoin. He is a formidable constitutional expert, an artist skilled in the Constitution, which puts him above all the parties and above all frivolous and futile discussions. His message is always legally sound.

Senator Beaudoin, I thank you for teaching me so clearly and simply that both the official languages of Canada are equal. Your presence and, often, your company at various artistic activities, be it theatre, music or the arts in general, has brought me great joy. One is never alone in your company. As a parting gift, I want to offer up a poem by Gilles Vigneault, *Prenez soin des mots, Madame*.

> Beware the spoken WORD —
> a breeze and it is gone
> with a promise to return.
> Beware the word SILENCE
> from which spring words of
> memory in turn.
>
> Beware the word MEMORY —
> in the dead of night it might
> a secret become again...
> and in trying so to hide it
> we would lose the word MYSTERY,
> blind to our loss.
>
> Between sand and stone
> trout await their river,
> the river, its stream...
> but the LAKE... what of it?
> And the clouds and the rain?
> Drink we dare not...

Between BEING and DESIRE
MAN, usurping the word SIRE,
keeps the WOMAN nameless...
but time knows success
and now my mistress
says NO... and YES.

A tree become BOOK
One LEAF brings to life
a season of birds...
the soul still eludes
and crumbles away
at the very first blows.

Beware the INVISIBLE
And again become the target,
the bow... the arrow and the hunter,
the silence and the river
and the points of light
that glow in the darkness ...

Hon. Senators: Hear, hear!

[*English*]

The Hon. the Speaker: Honourable senators, I regret to advise that the extended time for tributes has expired. I still have on my list Senator Beaudoin, Senators Keon, Jaffer, Joyal, Bacon, LaPierre and St. Germain. I will continue under Senators' Statements with those names.

Is it agreed, honourable senators?

Hon. Senators: Agreed.

Hon. Wilbert J. Keon: Honourable senators, it is a wonderful honour and pleasure to join you in paying tribute to a truly great Canadian, Honourable Senator Gérald-A. Beaudoin, who has made the well-being of Canada his business.

In 1997, the President of the Canadian Bar Association, Russell Lusk, during the presentation of the Ramon John Hnatyshyn Award for Law, recognizing outstanding contributions to the law or legal scholarship in Canada, said that Senator Beaudoin's contribution to the practice and understanding of law was truly exceptional. He has consolidated the relationship between practitioners, academics, francophones and anglophones. He is a true example for the profession.

I have known Senator Beaudoin for some 35 years. We were both professors at the University of Ottawa in our respective disciplines. He went on to become Dean of the Faculty of Law. We both served on the board of governors at the same time. Senator Beaudoin was a great promoter of the University of Ottawa. His contributions in that realm have elevated the university to what I believe is the only true bilingual university in our country. In addition to being a lawyer, a law professor, dean and senator, he is a prolific author, having published more than 100 articles, dozens of books and a number of elaborate volumes on constitutional issues.

When I came to the Senate in 1990, I was very relieved to see my old friend by my side. I found myself at that time sitting on the Standing Senate Committee on Legal and Constitutional Affairs, sadly lacking in expertise. I treasured the support and counsel of Senator Beaudoin and went to him very often.

Today, I find myself again in the presence of members of the Standing Senate Committee on Official Languages.

[*Translation*]

During our debates, his remarks are always judicious and to the point.

[*English*]

He is always able to bring clarity, with ease, to the constitutional perspectives of our discussion.

Senator Beaudoin, in the name of all Canadians, I thank you for your fervour and commitment. You are, indeed, an institution within an institution. It has been a great privilege to work with you here and elsewhere. I will miss you. We will all miss you.

● (2030)

Hon. Mobina S. B. Jaffer: Honourable senators, I, too, rise to pay tribute to Senator Beaudoin.

Senator Beaudoin, I have served with you on many committees — Bill C-36, the Human Rights Committee and the Legal and Constitutional Affairs Committee. I learned so much. Thank you.

You had a passion for laying the foundation by seeing that everything was constitutionally sound. Yes, often your questions were predictable, but it certainly helped us all to focus on the Constitution and the Charter.

You will be difficult to replace on our committees. Your work will be missed, but most of all your presence in the committees will be missed.

We will miss you greatly. Thank you.

[*Translation*]

Hon. Serge Joyal: Honourable senators, it is with much gratitude that I rise to mark the retirement of Senator Beaudoin, a personal friend since 1969, when he tried to recruit me in London to teach administrative law at his university's law school.

Senator Beaudoin is a man of integrity, dignity and complete devotion to his work as a lawmaker and parliamentarian. Present at all debates of a legal nature, he has generously shared the resources of his experience in law and the enthusiasm of his conviction that the Canadian Charter of Rights and Freedoms has become the pivot point, even the centre of gravity, of the country's Constitution. Through his considerable writings and his many public interventions, he has contributed to making the Charter known and appreciated as a key feature of the Canadian identity. In every Senate debate or meeting of the Standing Committee on Legal and Constitutional Affairs, he has demonstrated his prodigious mastery of case law and I might say, his phenomenal memory of the 430 or so cases that have invoked the Charter since it was adopted 22 years ago.

Senator Beaudoin was right to foresee the fundamental changes that have occurred in public debate since the Charter. Relations between the executive powers and the Houses of Parliament, and between Parliament and the courts have all been redefined. In the Charter, Canadians have seen a bulwark against the arbitrary and the tyranny of the majority.

Finally, official language minority groups have seen in it the effective guarantee of their rights and the confidence of being able to continue to exist in the future, with their own characteristics.

In your always clear and correct language, Senator Beaudoin, you have exemplified probity and have proved, beyond any doubt, that the Senate can make a difference. Would you continue to contribute the immense resources of your experience to our modest efforts so that the Canadian parliamentary system can continue to grow at home and abroad?

Hon. Lise Bacon: Honourable senators, I would like to speak today on the remarkable contribution made by our colleague Senator Beaudoin to the work of the Senate. Appointed to this chamber in 1988, he has given us the benefit of his erudition with respect to constitutional rights, his passion for parliamentary debate and his lively interest in the work of committees. Most of us know the parliamentarian Gérald Beaudoin, but he has also been a lawyer, a law professor, a dean and a prolific author.

During his 20 years as a professor, he helped to train a generation of legal experts. He was also Dean of Civil Law for 10 years, from 1969 to 1979.

His contribution to the teaching of law has been quite remarkable, especially for those who attended the University of Ottawa.

He published many reference works for students and law practitioners. Texts such as *Le partage des pouvoirs, Canadian Charter of Rights and Freedoms,* and *La Constitution du Canada*, a new edition of which has just been released, are all examples of the quality of his work. His acute sense of analysis and his encyclopaedic knowledge of the law make Senator Beaudoin a key reference when it comes to the Canadian Constitution.

Throughout his years in the Senate, Senator Beaudoin was very active on many fronts, especially on committees, filling roles such as co-chair of the joint committee on the amending formula, co-chair of the committee on a renewed Canada, not to mention Chair of the Standing Committee on Legal and Constitutional Affairs for nearly three years.

I must acknowledge Senator Beaudoin's particular contribution over the past few years to the activities of the Canada-France Interparliamentary Association, of which he was vice-president.

His constant interest in and enthusiasm for the association certainly deserves to be mentioned.

Senator Beaudoin dedicated his life and entire career to the study of Canadian constitutional law, and I am sure he will remain a keen analyst of this subject for a long time. Perhaps he will find even more time to write and share with us his considerable knowledge.

Hon. Gerry St. Germain: My neighbour, why are you leaving? You are too young to go. Still, I would like to say a few words. For a professor from the East who sat next to a cowboy from the West, you did a good job.

Senator Beaudoin, we worked together on many issues. You worked tirelessly for the Metis and the Aboriginals. For that I thank you very much.

[*English*]

My friends, I have worked with Senator Beaudoin on a litany of files. As Senator Lynch-Staunton said, I used to ask him questions. I would say, "Look, I am a contractor, a commercial pilot, a former air force pilot; I do not understand all this constitutional stuff. What is your version of this, Senator Beaudoin?" He would say, "Well, it could be constitutional or maybe it is not constitutional." I would say, "Which one is it?" He would say, "It could be and it could not be." I would leave, shaking my head, but finally he would come to me and say, "St. Germain, I would like to tell you the way it is." He always had a response.

We worked together on Bill C-68, a bill nearly as controversial as Bill C-250 that is before us now. It was an interesting process to work with Senator Beaudoin because he was torn on this issue. It was an area on which he had never worked before. He knew it was a constitutional question. In the final analysis, he voted with the other side. Having said that, I have to give him a lot of credit because since then he has come back to me and said, "St. Germain, if I had to do that all over again, I might do something different."

The greatest tribute I can pay to Gérald is to repeat a story from a recent caucus meeting. I cannot divulge what happened in the caucus — as much as honourable senators would like to know — but I can say this. The members of the Canadian Alliance from Western Canada who are now part of the Conservative Party said that the retirement of Senator Beaudoin is most sorrowful. They were so impressed by the presentations he made at caucus that they wish he could stay.

Gérald, you always brought your intellect to the debate, but you always had your practical side. Good luck, best wishes and enjoy your retirement.

Hon. Sharon Carstairs: Honourable senators, what we have not mentioned tonight is the twinkle in the eye. I think we have missed talking about the fun times with Senator Beaudoin because there is indeed a fun side to Senator Beaudoin.

I will never forget going up in a gondola, in the middle of China, arriving at the top with Senator Beaudoin, Senator Murray and Senator Molgat. As we arrived we could hear singing, but we could not see the singers. We kept hearing the music. Senator Beaudoin was the one who discovered them, up in the trees, singing down at us. That was a wonderful example of the sparkle that comes into his eye when a good thing happens.

He had a little trouble with some of the food in China, as I recall. Senator Beaudoin loves his food, but there were many items on those menus that none of us could identify.

Senator Keon will remember another time when we were studying the issue of assisted suicide. Senator Beaudoin was having a lot of trouble with the idea that someone who is nearing the end of his or her life would not be fed, that no artificial hydration or nutrition would be administered. He was concerned that the dying person would be hungry. I remember both Senator Keon and I agreeing that, when Senator Beaudoin's time came, he would not be hungry.

• (2040)

Honourable senators, I remember so much about Senator Beaudoin. He was the chair of the Standing Senate Committee on Legal and Constitutional Affairs when I first came here, and we were working on Bill C-68, which Senator St. Germain recalls. That was a tough one, because Senator Beaudoin, in chairing the committee, in that fair and honourable and honest way of his, was not necessarily sure the majority was right, at least not in the committee. Senator Beaudoin was with me again — he as deputy chair, me as chair — when a subcommittee of the Social Affairs, Science and Technology Committee, in June 2000, produced a report entitled, "Quality End-of-Life Care: The Right of Every Canadian."

This is a man who has many interests, a man who, as we have heard tonight, has many things of which he should be proud. Most of all, he should be proud of the fact that he has remained a very human man.

The Hon. the Speaker: Senator LaPierre and Senator Prud'homme, I regret that the time for Senators' Statements has expired.

I shall now call on Senator Beaudoin for a response.

[*Translation*]

Hon. Gérald-A. Beaudoin: Honourable senators, I have had several careers in my life: 10 years in justice, 20 years in university and 15 years in the Senate. I quite liked the Senate.

I had the opportunity to say what I think in the Senate and I chaired very interesting committees, such as the two joint committees on the Constitution, Beaudoin-Edwards and Beaudoin-Dobbie, during the days of Prime Minister Mulroney. I quite liked the Standing Senate Committee on Legal and Constitutional Affairs, on which I sat as chair and co-chair.

[*English*]

The Standing Senate Committee on Legal and Constitutional Affairs was attractive. I worked with Senators Stanbury, Carstairs, Milne, Furey and, on my side, Andreychuk, Nolin and Buchanan — not to mention Senators Lynch-Staunton, Kinsella and Stratton.

I had the chance to work on committees such as the Special Senate Committee on Euthanasia and Assisted Suicide, chaired by Senator Neiman, and on the committee chaired by Senator Carstairs that produced the report entitled, "Quality End-of-Life Care: The Right of Every Canadian." I sat on the Human Rights Committee, an interesting committee created and presided over by Senator Andreychuk, and later by Senator Maheu. I also sat on the Standing Senate Committee on Official Languages, where Senator Gauthier was and is so active — an essential committee.

[*Translation*]

It is through these committees that the Senate is most effective and productive. We should be proud of what we accomplish in the Senate. The Senate performs an essential legislative function. This is the reason for its existence, as Senator Joyal has often pointed out. I do not know if I said that I was in favour of abolishing the Senate, but I was certainly in favour of a comprehensive reform of our institution and I have not changed my mind.

The Senate has more time to examine major issues. The Senate costs less than royal commissions and, in many cases, it reports much more quickly. Abolishing the Senate would be a very serious mistake and the negative impact on legislation would be considerable.

My true passion is, of course, constitutional law and the Canadian Charter of Rights and Freedoms. This seems obvious. I remain attached to the Senate. I am even prepared to come as an expert to give my opinion to committees, if you so wish.

The Senate must be reformed; it must be elected. Of course, we should respect the vested rights of those who are already here, but senators should be elected. However, an indirect election is sufficient. We should do what the Americans did in 1913. Today, they have the greatest senate in the world. The Canadian Senate is indispensable. How many bills are improved through amendments proposed by our committees? We should be congratulated instead of being criticized. It is up to us to find a way to be more visible.

People ask, what am I going to do now. A new career will begin the day after I leave here. I will continue to write. I have written several books in my lifetime. I have two books on the go, one of them my memoirs. I will be lecturing in Canada and elsewhere. I am a member of a number of international academies.

Primarily, I will be giving legal opinions and carrying out in-depth studies on constitutional law. That is what I was doing before I came to the Senate. I am now returning, 15 years after my appointment, to my former life.

The Senate has changed. It reflects our modern times and it must continue along that path. Artists, actors, people from the theatre have been appointed, and that must continue. The Senate must represent all walks of life. Its role is to be a good legislative chamber.

Men and women are equal. Languages are equal. Equality is important in the Canadian Charter of Rights and Freedoms. The principle of gender equality is one of the products of the 20th century.

The finest section in the Charter is section 28.

[*English*]

I have been happy in the Senate. It has been a pleasure to cross the Ottawa River each day, to have the opportunity to be in two beautiful provinces. The Centre Block is like a castle, with its neo-Gothic style. I have been in the Senate for 15 years, and at the beginning of my career I was an assistant parliamentary counsel for the House of Commons. Hence, I have worked in a castle for 20 years.

[*Translation*]

My thanks to all who have helped me in the Senate: officers, colleagues, senior staff and all the personnel. I also want to thank my wife, who is in the gallery, and who has always been at my side. She has played a very large role for close to 50 years now. I would also like to thank my four daughters. Viviane is a public servant, Louise an artist, Denise a veterinarian, and Françoise a lawyer. I owe so much to my nearest and dearest.

[*English*]

A jurist I am born, and a jurist I will probably die.

Life changed in the Senate. We travel the world more, which is a fantastic advantage. We learn so much. We are more involved in diplomacy. The legislative branch of the state is much better than it was, and we have better researchers.

• (2050)

I have not forgotten the press, which is so fundamental. I am much in favour of televised sittings. I am concerned with the unity of my country. I love history.

Quebec is lucky to be in Canada. Canada is lucky to have Quebec.

Hon. Senators: Hear, hear!

Senator Beaudoin: Canada is a great federation. The author of the Quebec Act of 1774, the great British Prime Minister Lord North, who is not well known but who was, nevertheless, a great Prime Minister, saved Canada at the time of American independence. He gave back to Quebec the French laws of previous times and he successfully kept Quebec in Canada. Lord North was a Prime Minister of great vision. That is the kind of politician I like — a politician with great vision who makes momentous decisions.

[*Translation*]

I am leaving content with what I have accomplished here. My thanks to you all.

[*English*]

ROUTINE PROCEEDINGS

STUDY ON CANADA-UNITED STATES AND CANADA-MEXICO TRADE RELATIONSHIP

INTERIM REPORT OF FOREIGN AFFAIRS COMMITTEE TABLED

Hon. Peter A. Stollery: Honourable senators, I have the honour to table the third report of the Foreign Affairs Committee, which was authorized to examine and report upon the Canada-United States of America trade relationship and the Canada-Mexico trade relationship. It is an interim report entitled “Mexico: Canada’s Other NAFTA Partner (Volume 3).”

I ask that it be placed on the Orders of the Day for consideration at the next sitting of the Senate.

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

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

THE SENATE

MOTION TO PERMIT ELECTRONIC COVERAGE OF ROYAL ASSENT CEREMONY ADOPTED

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(i), I move:

> That television cameras be permitted in the Senate chamber to record the Royal Assent ceremony on Wednesday, March 31, 2004 at 3:45 p.m. with the least possible disruption of the proceedings.

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

Hon. Senators: Agreed.

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

Hon. Marcel Prud'homme: Honourable senators, I want to bring to the attention of the leadership of both parties that someone will have to ensure that very clear rules apply. We have given permission for this before, and I agreed to it. However, the permission was abused when the cameras showed absenteeism and exceptional events that did not reflect well on the Senate.

I hope that the leadership will consider my observation carefully and ensure that precise rules apply.

I was an initiator of CPAC in the House of Commons. It was a year and a half before I, as chairman of the committee, gave my consent. I wanted to ensure that the rules will be very clear, unlike those that apply in the Congress and the Senate of the United States of America. I do not say this to criticize them, but what they allow gives a very bad impression, and it does not reflect the work being done.

I will give my consent with great pleasure, if I have this commitment.

Senator Rompkey: Honourable senators, Senator Prud'homme's comment is well taken. It is one that I support, as I am sure does the entire chamber. Although CPAC will televise the events, as we agreed earlier, I fully agree that there must be clear rules and that we must avoid the mistakes of the past.

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

Hon. Senators: Question!

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

Hon. Senators: Agreed.

Motion agreed to.

RWANDA

NOTICE OF MOTION TO RECOGNIZE GENOCIDE

Hon. Mobina S. B. Jaffer: Honourable senators, I give notice that at the next sitting of the Senate I will move that this house call upon the Government of Canada to recognize the genocide of the Rwandan people and to condemn any attempt to deny or distort a historical truth as being less than genocide, a crime against humanity.

QUESTION PERIOD

PRIME MINISTER'S OFFICE

NATIONAL UNITY RESERVE FUND

Hon. Jack Austin (Leader of the Government): Honourable senators, on Wednesday, March 24, Senator LeBreton asked me a question regarding the national unity reserve fund, to which I made the following reply:

> Honourable senators, the Prime Minister was not aware of a fund called the national unity reserve until the time he became Prime Minister, and that fund has in no way been used by Prime Minister Martin.

Honourable senators, I was given to understand that the Prime Minister did not know about a segregated fund known as the national unity fund. As it turns out, my information was incorrect and I wish to apologize to the chamber.

NATIONAL DEFENCE

AURORA INCREMENTAL MODERNIZATION PROJECT— TENDER FOR DATA MANAGEMENT SYSTEM

Hon. J. Michael Forrestall: Honourable senators, my question is directed to the Leader of the Government in the Senate.

In a written response to an earlier question about an untendered contract to General Dynamics Canada for extra scope on the data management system for the Aurora Incremental Modernization Project, I received the answer that the contract was tendered properly but had merely been amended repeatedly.

● (2100)

Will the Leader of the Government please table the number of amendments, the date these amendments were made and the corresponding changes in the value of the contract to date? I realize he will not have that information at hand, but I would appreciate his undertaking to obtain it.

Hon. Jack Austin (Leader of the Government): Honourable senators, I shall take notice of the question.

REPLACEMENT OF SEA KING HELICOPTERS— TENDER FOR DATA MANAGEMENT SYSTEM

Hon. J. Michael Forrestall: I have a supplementary question along the same vein. The written response also stated that the data management system would not be ready for production prior to the year 2008. This is the same data management system that is supposed to go into the new maritime helicopter if Sikorsky's H-92 is successful in the competition. According to Treasury Board guidelines, in a lowest-priced compliance competition, which we understand this to be, a competitor must be absolutely technically compliant to be awarded the project. My recollection is that the competitors had to be certified prior to the awarding of the contract. The contract is expected to be awarded some time this spring.

Can the Leader of the Government tell this chamber why, after HN-90's disqualification, Sikorsky's H-92 is still in the Maritime Helicopter Project competition if its data management system will not be ready, by the government's own admission, until 2008? How can they be there if, to be eligible, they must be compliant?

Hon. Jack Austin (Leader of the Government): Honourable senators, I shall seek an answer for Senator Forrestall.

FOREIGN AFFAIRS

THE BUDGET—DEVELOPMENT ASSISTANCE

Hon. A. Raynell Andreychuk: Honourable senators, last week the Leader of the Government indicated that development aid had been cut due to an overwhelming deficit and debt that this government had "inherited" — I believe that is the word that was used. I would point out that much of that deficit started in the 1970s when in fact we had aid and development assistance that was creative.

Aid and development assistance has never been an issue of party politics in Canada. It has been an overwhelming concern of Canadians to ensure that we have full and adequate resources to work with other countries.

Is the Leader of the Government indicating that aid will now be dependent on our personal status in this country? In other words, is the government leader saying that, if we find certain priorities to be higher, Canada will again cut development aid, or will we attempt to meet the goals set by Mr. Pearson some 30 years ago in a consistent and coherent way?

Hon. Jack Austin (Leader of the Government): Honourable senators, as the Minister of Finance has indicated in the budget, and in statements subsequent to the budget, it is the intention of this government to increase foreign aid year by year. As the honourable senator knows, the current budget contains a substantial increase in foreign aid for fiscal 2004-05. I mentioned the sum last week.

I would be very happy to draw to the attention of Senator Andreychuk the statement of the Minister of Finance.

Senator Andreychuk: I would ask the Leader of the Government in the Senate to bring to the attention of the government my suggestion that it is time that we clearly delineate what is humanitarian assistance for man-made or natural disasters, what we spend in peacekeeping and what we allocate for true development. While there is a willingness by Canadians to support all three, often it is the development aid budget that suffers in times of humanitarian assistance and peacekeeping.

A commendable article by David Malone in the weekend newspaper argued that to be successful in development we must be there in a sustained and continued way. Therefore, the development assistance budget must increase, not by putting everything together globally, but by having the actual development budget continue to rise to meet the goal that was set 30 years ago.

Senator Austin: Honourable senators, on the assumption that that was a question, I have indicated repeatedly that this government intends to improve its development budget. I have mentioned already the statements of the Minister of Finance.

However, in listening to Senator Andreychuk, a question comes to mind — which, unfortunately, she cannot answer. When I look at her leader's statements with respect to reducing taxes, I wonder whether she can assure this chamber that the development budget she is urging on this government will not be impaired by her leader and that he will support this government's development budget fully and without qualification.

Senator Andreychuk: Honourable senators, I am glad the Leader of the Government in the Senate put that question to me. I should tell him that there is only one policy statement out on behalf of the Conservative Party of Canada. It is only the first building block. If one looks at it carefully, it indicates that the Conservative Party is committed to increasing aid.

As the government leader is well aware, the party is very new and hence the platform is yet to be developed. The government leader may wish to delay an election sufficiently so that we can flesh out the chapter and verse on development aid.

Senator Austin: Honourable senators, I am not quite that curious. However, I will look to future events, with the assurance that Senator Andreychuk and I will make equally aggressive representations to our respective parties.

AGRICULTURE AND AGRI-FOOD

BRITISH COLUMBIA—OUTBREAK OF AVIAN INFLUENZA IN POULTRY INDUSTRY

Hon. Gerry St. Germain: Honourable senators, my question is to the Leader of the Government in the Senate. It relates to the outbreak of influenza in the poultry operations in British Columbia. I received several calls on this subject this weekend. I tried to contact Honourable Senator Austin on Friday, but his calls were being screened. The woman asked me if I was calling about Bill C-250. I said, "We could make it apply to chickens, but that is not what I am calling about."

Two zones have been created on British Columbia's Lower Mainland: a high-risk zone, five kilometres from the original outbreak, and a 10-kilometre surveillance zone outside of that. The entire Lower Mainland has been established as a control area — which means that no poultry products can be shipped out of there. This includes chicken and turkey. The cost to the poultry producers there is $400,000 a month due to the inability to ship out. Producers cannot ship to Vancouver Island or to the interior. The only place these chickens can be consumed is in the lower mainland. It is surmised that, if the CFIA does not change its position, they will have to begin depopulating — I think that is the word being used nowadays — or euthanizing about 800,000 birds and hatching eggs per week.

Has the Leader of the Government any information for the poultry industry at this time in regard to relieving the situation?

Hon. Jack Austin (Leader of the Government): Honourable senators, the honourable senator has usefully outlined a difficult situation in the agricultural sector in British Columbia. The avian influenza, which is type H7N3, is rampant in the hot zone and is suspected to be contagious in the chicken and turkey farms throughout the Lower Mainland of British Columbia. It is for that reason that the Canadian Food Inspection Agency has determined that all these flocks are high-risk and are to be depopulated, to use the phrase that Senator St. Germain has used.

• (2110)

I would advise the Senate that there are no reported cases of the more serious H5N1 avian influenza strain that has ravaged parts of Asia and is thought to be of risk to humans. The avian influenza H7N3 is not so considered.

The Government of Canada is certainly considering and, as I understand it, intends to assist with financial compensation the poultry breeders who are affected. I do not have the details of that program at this time.

Senator St. Germain: It is encouraging to hear, honourable senators, that the government is considering some financial assistance.

I would ask the honourable minister if he would present the case to cabinet because, in many instances, those who will be affected are young farmers who have extended themselves to finance poultry operations, both turkey and chicken. If assistance is not forthcoming immediately, it will financially jeopardize their operations. If he would be so kind as to take that message forward, honourable senators, the people in British Columbia, who are the only ones affected, would be most appreciative.

Senator Austin: The situation with respect to financial costs to the poultry breeders is recognized and, as the honourable senator knows, the owners of birds that are being destroyed will receive compensation under the Health of Animals Act. However, as yet, I have no details. I will convey the honourable senator's representations along with my own.

LEGAL AND CONSTITUTIONAL AFFAIRS

SWEARING OF WITNESSES BEFORE COMMITTEE— RULING ON ALLEGED ERRONEOUS TESTIMONY

Hon. David Tkachuk: Honourable senators, my question is for the Chair of the Standing Senate Committee on Legal and Constitutional Affairs. Has the chair ever invited witnesses to swear an oath before commencing their testimony in committee?

Hon. George J. Furey: Honourable senators, it is not the usual practice of the committee to do that.

Senator Tkachuk: I was unable to attend Wednesday's meeting of the Standing Senate Committee on Legal and Constitutional Affairs. However, I did read the testimony, and in particular, the ruling of the chair on a question of privilege that I raised. For the benefit of the chamber, I had asked for a ruling because, during the committee meeting that I attended, MP Svend Robinson gave testimony that I suspected to be untrue. We asked the witness for clarification, but he did not withdraw any of his statements, even though I am aware that he has been fighting this issue for quite a number of years and would most certainly have been aware of all those who supported and who opposed his private member's bill. When a member of the committee is persuaded that the committee has received deliberately deceptive testimony and raises a question of privilege, what procedure is the chair to follow?

Senator Furey: On the question of whether or not it was a point of order, Senator Tkachuk raised the issue himself. He said he was not sure it was a point of order, a question of privilege or either of the above.

Honourable senators, I do not have the ruling in front of me but I will provide you with a copy if you do not have it. The ruling was that it was not a point of order, and if it was a question of privilege, the place to raise it was here in the chamber.

Senator Tkachuk: Honourable senators, we were asked if there were witnesses that we thought should appear before the committee. One group called me requesting to be heard, and I met with them early last week. They represent a national organization and I was persuaded that the committee had not heard their position and they should be called to appear. I forwarded the name of the organization to Senator Beaudoin who passed it along using the appropriate channels. Could the chair explain why, instead of hearing from this group, the bill was reported from committee? Does the chair have a problem with this group?

Senator Furey: Honourable senators, I do not believe the committee had a problem with hearing from any group. The question was answered at committee, but the honourable senator did not attend the last meeting of the committee. I shall provide him with the response, if he does not have it in front of him.

Senator Tkachuk: I do not have it in front of me. I am not a member of the committee, and I would like to know the response.

Senator Furey: I shall provide that to the honourable senator.

FOREIGN AFFAIRS

UNITED STATES—
PARTICIPATION IN MISSILE DEFENCE SYSTEM

Hon. Douglas Roche: Is the Leader of the Government in the Senate aware that, within recent days, two important statements by high ranking United States figures have been made cautioning Canada not to join the U.S. ballistic missile defence system? First a group of 49 former U.S. generals, admirals and senior officers, including a former chairman of the Joint Chiefs of Staff under Presidents Ronald Reagan and George Bush, Sr., warned Canada to reject the Bush administration's proposed system because the program is unproven and too expensive to make it worth while. Second, Philip Coyle, a former senior Pentagon official, said the system is likely to fuel the global arms race and will lead to the weaponization of space.

Will the leader draw these comments to the attention of his colleagues in the cabinet?

Hon. Jack Austin (Leader of the Government): Honourable senators, I thank Senator Roche for the question. I did see that report and I read it with great interest. I know that what appeared in the press, to which Senator Roche has referred, is being considered in government halls.

Senator Roche: I will interpret that answer as being favourable to my position. I hope I will not be proven wrong at some future date, honourable senators.

Honourable senators, the House of Commons recently voted on this matter, as the government leader knows, and nearly three weeks ago, I introduced a motion in the Senate opposing Canadian participation in the U.S. missile defence system.

Does the leader agree that the time has come for the Senate to vote on this matter?

Senator Austin: Honourable senators, what I do agree with is that the inquiry initiated by Senator Roche on this topic should go forward when he is ready to speak to the chamber, and I look forward to his address.

THE SENATE

UNITED STATES—PARTICIPATION IN MISSILE
DEFENCE SYSTEM—REQUEST FOR DEBATE

Hon. Douglas Roche: Honourable senators, I spoke on this matter on March 9 and I have been waiting for any other senator who wished to speak to do so. I have not noted that any senator wishes to participate in this debate. Therefore, it is time for a vote.

My question to the leader is: Is it not time, after three weeks, that we vote on a subject of extreme importance to the future of Canadian foreign policy?

Hon. Jack Austin (Leader of the Government): Let me apologize for the second time tonight and say to Senator Roche that I am sorry that I misstated the initiation of the debate.

I will certainly go back and consider what he had to say in this chamber. It seems to me I have been a bit overly preoccupied with a particular bill. I know that Senator Cordy has taken the adjournment, and I will make inquiries to determine her intentions.

QUESTIONS ON THE ORDER PAPER

REQUEST FOR ANSWERS

Hon. John Lynch-Staunton (Leader of the Opposition): If I may comment on delayed answers, I have had a question on the Order Paper since February 10. Could the deputy leader assure me or give me some hope that I will have an answer before Easter?

Hon. Bill Rompkey (Deputy Leader of the Government): Easter is a time of hope, Your Honour. I do not mean to treat the issue facetiously. It has been a while since the question was posed, so I will ensure that the answer is expedited.

• (2120)

The Hon. the Speaker: Does the Honourable Senator Forrestall have a question relating to a delayed answer?

Hon. J. Michael Forrestall: Honourable senators, I have a question that has been outstanding for 10 years. All we want are the helicopters.

Senator Rompkey: Honourable senators, I will consult with the deputy leader of 10 years ago to see that the answer is expedited.

USER FEES BILL

MESSAGE FROM COMMONS—
SENATE AMENDMENTS CONCURRED IN

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill C-212, respecting user fees, and acquainting the Senate that they have agreed to the amendments made by the Senate to this bill without further amendment.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Bill Rompkey (Deputy Leader of the Government): Your honour, I should like to call the government orders in the following sequence: Bill C-8, Bill C-24, Bill C-4, Bill C-22, Bill C-16 and Bill C-21.

LIBRARY AND ARCHIVES OF CANADA BILL

BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Morin, seconded by the Honourable Senator Gauthier, for the third reading of Bill C-8, to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence, as amended.

Hon. David Tkachuk: Honourable senators, I would like to make a few remarks on Bill C-8, to establish the Library and Archives of Canada, and its predecessor, Bill C-36, under the same title from the last session of Parliament, before we conclude third reading debate.

First, I would like to congratulate the official opposition in the other place for their hard work and perseverance in committee and in the House. It will be a distant memory now, but Bill C-36 was controversial from the moment it was introduced and was mishandled at every step of the way. I hope that the government learns something from the process.

The legislation was intended to create a new institution by merging two of Canada's most venerable and historic institutions, the National Library of Canada and the National Archives of Canada, since it was acknowledged that some duplication of services existed but, more important, that both institutions would benefit from the synergy created by operating under one roof.

What was controversial about the bill had nothing to do with the stated aim of merging the two institutions. What was wrong with this bill was the addition of a significant amendment to the Copyright Act through clause 21 that was truly out of place and, I will add, out of line in Bill C-36.

From this point of departure, the tale becomes more twisted and complex with decisions, agreements and reversals of decisions and broken agreements in the other place. After much toing and froing and in response to the incredible pressure the government members of the committee were feeling, Bill C-36 was ultimately amended at third reading by shortening the period of time that clause 21 would protect deceased authors' unpublished works from until December 31, 2017 to until December 31, 2006.

The tale did not end here, since the session of Parliament ended before the Senate passed Bill C-36. As Senator Morin explained in his committee report last week, the bill was introduced in the other place in February at report stage but without amendment, according to the rules for reintroducing legislation from the previous session, at which point it was then referred to the Senate and renamed Bill C-8. In essence, by delaying the passage of Bill C-36 until the new year in a new session of Parliament, the intended extra copyright protection for the works of deceased authors expired before the bill was reintroduced as Bill C-8, thereby making clause 21 obsolete. This made amending the bill in your Senate committee rather perfunctory, even if it satisfied many of the original critics of that clause. The democratic victory did not occur in the Senate committee but rather in the last session of Parliament when the original version of the bill died on the Order Paper.

Honourable senators, I would like to inform this chamber that those vocal critics of Bill C-36 and later Bill C-8 should thank their official opposition in the other place for the initial work and the work of the opposition in the Senate that was carried out late in the session last fall. It was only the former Prime Minister's personal agenda that cut short that session, effectively cancelling the true government intent of Bill C-36. All honourable senators should ask why it was originally intended that Lucy Maud Montgomery's heirs would receive special legislation that would translate into a form of special compensation by this government.

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

Hon. Senators: Question!

The Hon. the Speaker *pro tempore*: It was moved by the Honourable Senator Morin, seconded by the Honourable Senator Gauthier, that this bill be read the third time, as amended.

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

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

PARLIAMENT OF CANADA ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Morin, seconded by the Honourable Senator Downe, for the second reading of Bill C-24, to amend the Parliament of Canada Act.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, Bill C-24 seems innocuous, but the way in which it sailed through the House of Commons bothered me. That alerted me to look at it more carefully and honourable senators should do that. It is the role of senators to question and challenge proposed legislation from the other place, particularly that which is rushed through as this one was rushed.

Bill C-24 was given first reading in the other place on March 12 shortly after noon, and 10 minutes later, after unanimous agreement, second reading debate began. The minister, a member of each of the recognized parties and the member from Calgary Centre spoke. No other speaker rose and, within the next 20 seconds, pursuant to a House order, the bill was deemed read a second time; it was deemed referred to a committee, even though it was not referred to a committee; it was deemed reported without amendment, even though not a single witness was called and no clause-by-clause discussion was held; it was deemed concurred in at report stage, even though there was no report; it was deemed read the third time without a single intervention by any member of the other place; and it was deemed passed. All this process took less than 20 seconds.

Doing this so swiftly on a Friday afternoon can only raise suspicions, which are not to Parliament's credit. If there are good and valid reasons for this bill, why rush it through in record time on the eve of a weekend before a near-empty chamber and gallery?

This is not the first time that we have been faced with such an accelerated process. Honourable senators will remember Bill C-37, which came to the Senate in June 2000. It sailed through the other place a few sitting days prior to the summer adjournment. At least they slowed the process by deferring the vote to the following day. In June 2003, Bill C-39, also a bill to benefit parliamentarians, similar to the previous one I mentioned, sailed through at third reading in 15 minutes.

Parliamentarians seem to have an inability to put their cards on the table and to say to Canadians that they think they are entitled to a certain level of remuneration and benefits that can be compared to others. We seem to have this terrible reaction that Canadians do not feel that their parliamentarians or representatives should be properly remunerated. I disagree with that. I think most Canadians, while disagreeing with many of the things we do, respect the fact that there are Canadians who are willing to sacrifice themselves. Most parliamentarians, particularly those on the elected side, give up a lot to come to Ottawa and serve Canadians and are entitled to proper remuneration — pay, benefits, et cetera.

• (2130)

Honourable senators, we are faced with this bill, which I am told — and I hope that at committee this will be explained — is designed to favour one person only. There happens to be one person in the House of Commons who is suffering a certain disability and who, should that person leave the House without the benefit of this bill, will suffer some difficulty in meeting whatever expenses are necessary to meet that person's medication and care.

I am sensitive to that situation, but I feel awkward and embarrassed that I have to solve that problem by being asked to pass a bill to not only favour that person but extend it to all of us. Let me tell honourable senators one thing about this bill that is being argued both by the minister in the other place and by Senator Morin in this place. The argument is that this bill will bring the benefit package to the level similar to that of civil servants. That is not true. No civil servant is entitled to a benefit package — meaning disability, group insurance, et cetera — unless that person is receiving a pension. In this case, the member of Parliament need not be receiving a pension and is still entitled to the package. Now, if that is correct, why did the members of the House of Commons not get up and ask for what they deserve? We should not pretend that the argument for this bill is that it is equivalent to what civil servants are receiving. The argument should be that members of Parliament are in a special situation, a demanding situation, one greater than that of civil servants and should be entitled to special treatment. I am saying that elected members of the House are in a situation that is such that I would give them every benefit possible, but I would do it in an open way.

My hope is that we will refer this bill to committee and discuss it openly. There must be another solution. Three times since I have been in this place we have been called on to pass general legislation to favour one or two individuals in particular. That is wrong; not wrong for the individual being covered but wrong that Parliament should be called on to do so. There must be a way, as there is in private corporations and large businesses, so that the agreement with employees covers an individual when he or she suffers a certain incapacity. Why do we have to put Parliament in this awkward situation?

Honourable senators, the argument is not against the bill; the argument is against the way our representatives are being treated and, unfortunately, as we saw in the press when this bill was rushed through the other place, exposed to unfair criticism. I hope that the Senate can correct that perception in front of the committee and come up with a solution so we do not have to again endure embarrassing, unfortunate and what should be unnecessary legislation as is before us now.

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

Hon. Senators: Question!

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

PARLIAMENT OF CANADA ACT

BILL TO AMEND—THIRD READING—
MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Rompkey, P.C., for the third reading of Bill C-4, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence,
>
> And on the motion in amendment of the Honourable Senator Bryden, seconded by the Honourable Senator Sparrow, that the Bill be not now read a third time but that it be amended,

(*a*) on page 1, in the English version, by replacing the long title with the following:

"An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Counsellor) and other Acts in consequence";

(*b*) in clause 2,

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

"**20.1** (1) Subject to subsection (2), the Senate shall, by resolution and with the consent of the leaders of all recognized parties in the Senate, appoint a Senate Ethics Counsellor.

(2) If the position of Senate Ethics Counsellor is vacant for 30 sitting days, the Senate shall, by resolution and after consultation with the leaders of all recognized parties in the Senate, appoint a Senate Ethics Counsellor.

20.2 The Senate Ethics Counsellor shall be a member in good standing of the bar of a province or the Chambre des notaires du Québec.

20.3 (1) The Senate Ethics Counsellor holds office during good behaviour for a term of seven years and may be removed for cause, with the consent of the leaders of all recognized parties in the Senate, by resolution of the Senate.

(2) The Senate Ethics Counsellor, on the expiration of a first or subsequent term of office, is eligible to be re-appointed for a further term not exceeding seven years.",

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

(iii) on page 3,

(A) by deleting lines 1 to 12,

(B) by replacing lines 13 to 18, with the following:

"**20.4** (1) The Senate Ethics Counsellor shall assist members of the Senate by providing confidential advice with respect to any code of conduct adopted by the Senate for its members and shall perform the duties and functions assigned to the Senate Ethics Counsellor by the Senate.", and

(C) by replacing line 43, with the following:

"**20.5** (1) The Senate Ethics Counsellor, or any",

(iv) on page 4, by deleting lines 16 to 24, and

(v) in the English version, by replacing the expression "Senate Ethics Officer" with the expression "Senate Ethics Counsellor" wherever it occurs;

(*c*) in clause 4, on page 7, by replacing line 8, with the following:

"**72.06** For the purposes of sections 20.4,";

(*d*) in clause 6, on page 11, by replacing lines 37 and 38, with the following:

"(*d*) the Ethics Commissioner";

(*e*) in clause 7, on page 12, by replacing lines 7 and 8, with the following:

"any committee or member of either House or the Ethics Commis-";

(*f*) in clause 8, on page 12,

(i) by replacing lines 14 and 15, with the following:

"(*c*) with respect to the Senate, the", and

(ii) by replacing lines 28 and 29, with the following:

"Commons, Library of Parliament and office of";

(*g*) in clause 9, on page 13, by replacing the heading before line 1, with the following:

"SENATE, HOUSE OF COMMONS, LIBRARY OF PARLIAMENT AND OFFICE OF THE ETHICS COMMISSIONER";

(*h*) in clause 10, on page 13,

(i) by replacing line 7, with the following:

"ment", and

(ii) by replacing lines 14 and 15, with the following:

"Parliament or office of the Ethics Commis-";

(*i*) in clause 11, on page 13, by replacing lines 21 and 22 with the following:

"brary of Parliament and office of the Ethics Com-";

(*j*) in clause 12,

(i) on page 13,

(A) by replacing line 30, with the following:

"Parliament", and

(B) by replacing line 36, with the following:

"Parliament", and

(ii) on page 14,

(A) by replacing line 3, with the following:

"ment or",

(B) by replacing lines 6 and 7, with the following:

"of Commons, Library of Parliament or office of the",

(C) by replacing line 12, with the following:

"ment or",

(D) by replacing lines 16 and 17, with the following:

"House of Commons, Library of Parliament or office of",

(E) by replacing lines 25 and 26, with the following:

"mons, Library of Parliament or office of the Ethics",

(F) by replacing line 33, with the following:

"ment or", and

(G) by replacing line 38, with the following:

"Parliament";

(*k*) in clause 13,

(i) on page 14, by replacing lines 47 and 48, with the following:

"Commons, Library of Parliament or office of", and

(ii) on page 15,

(A) by replacing lines 13 and 14, with the following:

"of Parliament or office of the Ethics Commis-",

(B) by replacing lines 22 and 23, with the following:

"of Parliament or office of the Ethics", and

(C) by replacing lines 35 and 36, with the following:

"ment or office of the Ethics Com-";

(*l*) in clause 14,

(i) on page 15, by replacing lines 43 and 44, with the following:

"brary of Parliament or office of the Ethics Commis-", and

(ii) on page 16, by replacing lines 6 and 7, with the following:

"Parliament or office of the Ethics Commission-";

(*m*) in clause 15,

(i) on page 16,

(A) by replacing lines 14 and 15, with the following:

"House of Commons, Library of Parliament or office of ",

(B) by replacing lines 20 and 21, with the following:

"Library of Parliament or office of the Ethics Commis-",

(C) by replacing line 29, with the following:

"ment or",

(D) by replacing lines 34 and 35, with the following:

"House of Commons, Library of Parliament or office of", and

(E) by replacing lines 41 and 42, with the following:

"brary of Parliament or office of the Ethics Commis-", and

(ii) on page 17, by replacing line 1 with the following:

"ment or";

(*n*) in clause 16, on page 17, by replacing lines 11 and 12, with the following:

"mons, Library of Parliament or office of the Ethics";

(*o*) in clause 17, on page 17, by replacing lines 20 and 21, with the following:

"Library of Parliament or office of the Ethics Commis-";

(*p*) in clause 18, on page 17, by replacing line 30, with the following:

"ment";

(*q*) in clause 25, on page 20, by replacing lines 26 and 27, with the following:

"Library of Parliament or office of the";

(*r*) in clause 26, on page 20, by replacing lines 36 and 37, with the following:

"(*c*.1) the office of the Ethics";

(*s*) in clause 27, on page 21, by replacing line 9, with the following:

"Parliament";

(*t*) in clause 28, on page 21,

(i) by replacing lines 20 and 21, with the following:

"Library of Parliament or office of the Ethics Commis-", and

(ii) by replacing lines 28 and 29, with the following:

"Commons, Library of Parliament or office of the";

(*u*) in clause 29, on page 22, by replacing lines 14 and 15, with the following:

"Commons, Library of Parliament and office of the Ethics";

(*v*) in clause 30, on page 22, by replacing lines 24 and 25, with the following:

"Library of Parliament or office of the Ethics Com-";

(*w*) in clause 31, on page 22, by replacing line 33, with the following:

"ment";

(*x*) in clause 32, on page 22, by replacing lines 38 and 39, with the following:

"of Parliament or office of the Ethics Commissioner,";

(*y*) in clause 33, on page 23,

(i) by replacing line 3, with the following:

"word "or" at the end of paragraph (*b*), by adding the word "or" at the end of paragraph (*c*) and", and

(ii) by replacing lines 6 to 8, with the following:

"(*d*) the office of the Ethics Commissioner";

(*z*) in clause 34, on page 23, by replacing lines 15 to 17, with the following:

"(*c*.1) the office of the Ethics Commissioner";

(*z*.1) in clause 36, on page 24, by replacing lines 11 and 12, with the following:

"Commons, Library of Parliament and office of the";

(*z*.2) in clause 37, on page 24,

(i) by replacing line 22, with the following:

"Parliament", and

(ii) by replacing line 31, with the following:

"ment or";

(*z*.3) in clause 38, on page 25, by replacing lines 12 and 13, with the following:

"any committee or member of either House or the Ethics Commis-";

(*z*.4) in clause 40,

(i) on page 28,

(A) by replacing lines 4 and 5, with the following:

"communes, à la bibliothèque du Parlement ou",

(B) by replacing lines 17 and 18, with the following:

"ment ou au commissariat à l'éthique par",

(C) by replacing lines 28 and 29, with the following:

"House of Commons, Library of Parliament or office of",

(D) by replacing lines 34 and 35, with the following:

"Library of Parliament or office of the Ethics Commis-", and

(E) by replacing line 43, with the following:

"ment or", and

(ii) on page 29,

(A) by replacing lines 2 and 3, with the following:

"House of Commons, Library of Parliament or office of",

(B) by replacing line 13, with the following:

"ment or",

(C) by replacing lines 19 and 20, with the following:

"brary of Parliament or office of the Ethics Commis-",

(D) by replacing line 26, with the following:

"ment or", and

(E) by replacing lines 38 and 39, with the following:

"Commons, Library of Parliament or office of the Ethics", and

(iii) on page 30,

(A) by replacing lines 5 and 6, with the following:

"Library of Parliament or office of the Ethics Commis-",

(B) by replacing lines 20 and 21, with the following:

"Library of Parliament or the office of the",

(C) by replacing lines 25 and 26, with the following:

"Commons, the Library of Parliament or the",

(D) by replacing lines 36 and 37, with the following:

"Commons, the Library of Parliament or the", and

(E) by replacing lines 42 and 43, with the following:

"Parliament or the office of the Ethics Commis-"; and

(*z*.5) in clause 41, on page 31,

(i) by replacing lines 23 and 24, with the following:

"Commons, Library of Parliament and office of the", and

(ii) by replacing lines 43 and 44, with the following:

"Commons, Library of Parliament and office of the".

(*Pursuant to the Order adopted on March 26, 2004, all questions will be put to dispose of third reading of Bill C-4 at 5 p.m. on March 30, 2004.*)

Hon. Donald H. Oliver: Honourable senators, I am pleased to rise tonight to once more join in the debate on the vital issues and enduring implications of Bill C-4. I consider this debate to be an important event in the history of this Senate.

First, though, I would like to make a few general remarks on the importance of the concept of integrity in our deliberations. As I am sure everyone here would agree, much of this debate has been about integrity and its critical importance both to us as individuals and to us as representatives of this great and honourable Canadian institution.

Allow me to underscore that importance with an observation from a great Canadian, the late Yousuf Karsh. He saw his work as "contemporary historical documents." For more than 60 years he captured the essence of the world famous in politics, theology, royalty, the arts and sciences, and the military. His 1941 portrait of a glowering, defiant Churchill taken in Ottawa came to symbolize Britain's indomitable wartime courage and catapulted Karsh into international fame. As a result of this and many other memorable encounters, he had this to say:

> I have found that great people do have in common an immense belief in themselves and in their mission. They also have great determination as well as an ability to work hard. At the crucial moment of decision, they draw on their accumulated wisdom. Above all, they have integrity.

Based on my long experience with honourable senators, I know that we too share an immense belief in our mission. We are determined. We do work hard. We often draw on our collective and accumulated wisdom. Above all, we have integrity.

However, as others have also pointed out both in this chamber and in committee, we cannot ignore what is happening around us. The erosion of public trust in government institutions is a worldwide phenomenon. Gallup International's 2002 Voice of the People survey asked 36,000 citizens across 47 countries to rate their level of trust in 17 different institutions "to operate in the best interest of society." The survey showed that "around the world, the principal democratic institution in each country," the Parliament or Congress, "is the least trusted of the 17 institutions tested, including global companies."

Closer to home, a survey conducted in 2002 by the Centre for Research and Information on Canada, CRIC, showed that the trust of Canadians "in their governments to protect the programs that they care about has slipped significantly since the year 2000." It also showed that while confidence in political leaders is rising, most Canadians rate political leaders lower than the heads of major companies in terms of honesty and ethical standards.

• (2140)

Sadly, in the wake of the recent sponsorship scandal, the faith of Canadians in the integrity of politicians and government has reached an all-time low. For example, a survey of Canadian business leaders, conducted by COMPAS for the *Financial Post* this last February, showed that 85 per cent of these leaders rate the sponsorship scandal as "a very serious issue," far more serious than the railway scandals that affected Sir John A. Macdonald's government and more than the pipeline scandals that propelled John Diefenbaker to a landslide victory. These leaders are convinced that the scandal has shattered public confidence in the honesty of politicians and government.

The sponsorship scandal is indeed a disgrace, and I trust and hope that it will be resolved soon. However, we should remember that Bill C-4 is not part of that solution. It is simply a bill that is fundamentally designed to determine the method of appointing a Senate ethics officer or counsellor.

Honourable senators, tonight and tomorrow and the next few days we have a choice here — to do the easy thing and let this bill pass, or to do the right thing and make sure that the process of selecting and appointing a Senate ethics officer upholds the honour, dignity and independence of the Senate. Now is the time for us to do what is right.

Doing the right thing is the essence of integrity and the foundation of enduring trust. That is why I have advocated for a robust and meaningful code of conduct for this august chamber for the last 12 years; but it all begins with a counsellor who is independent, and the process in this bill is fundamentally flawed.

Honourable senators, even though it has been quoted to you on several occasions by several speakers, one cannot help but go back to the main language in Bill C-4, proposed section 20.1. The language is clear and unmistakeable. "The Governor in Council shall..." Nothing could be clearer. In other words, not the Senate. This is not a Senate initiative. It does not become a Senate initiative until we read the amendment of Senator Bryden that I will deal with in some length later on.

However, this much is clear: First, the proposed section contains the mandatory "shall," which says this is how it will happen and no other way. Who has the power? The Governor-in-Council has. Frankly, we do not have to read any further to realize and understand the true intent of the government in relation to this bill.

That is why I support, in large measure, the amendment tabled by Senator Bryden last Thursday. Overall, this amendment would serve to rebuild public trust in the integrity of parliamentarians and buttress the respect that society places in Parliament as an institution. It would reassure the public that all parliamentarians place the public interest ahead of their private interests and provide the means by which the questions of parliamentarians relating to proper conduct may be answered by an independent, not partisan, adviser.

Contrary to what some of our honourable colleagues stated in this debate last week, I do not believe that we will jeopardize our integrity before Canadians if we amend this bill, as proposed by Senator Bryden, to make it right. Let us remember, after all, what the real problems are when the press and the public have criticized the role and responsibilities of the current Ethics Counsellor. They know that the Red Book spoke of an independent ethics counsellor. The current Ethics Counsellor is appointed by the Prime Minister and serves at the Prime Minister's pleasure. Therefore, the office is neither independent nor impartial in deciding questions of ethical import with respect to the Prime Minister or the members serving under the Prime Minister. As a result of this fundamental flaw, the current Ethics Counsellor has been widely criticized in the media for acting "like a lapdog rather than like a watchdog."

As Bill C-4 stands now, it not only continues to provide the Prime Minister with this control and influence, but it suggests that he would also have similar control over the ethics officer appointed to the Senate. I suggest to honourable senators that if the Senate blindly accepts Bill C-4 as it now stands, then we, too, would be seen as lapdogs, not watchdogs. We, too, would compromise our independence.

That independence is crucial to preserving our integrity. The Senate, and not the Governor in Council, must appoint the Senate ethics officer, and we should do it by resolution of this chamber.

As McGill Professor Fabien Gélinas pointed out to the Standing Senate Committee on Rules, Procedures and the Rights of Parliament, and as Senator Bryden reminded us last week, the Governor in Council does indeed have the last word under Bill C-4. I am aware that other honourable senators have quoted from the professor at length. I would like to quote again his precise words. Here is what he said:

> ...the last word here is not with the Senate.

Honourable senators, it is not with us. We do not have any last word. It has been dictated, and it is coming over from the PCO and the PMO.

Mr. Gélinas said:

> It seems to be that it is quite possible, under the bill, for the Governor in Council to appoint someone and get the resolution passed in the Senate. In terms of political realities, the last word is actually with the government and not really with the Senate. What the Senate can do is stop it. This is negative power, not a positive power.

Therefore, when the inevitable vacancy arises, the Governor in Council can appoint an ethics officer for six months, and the Senate, as an independent body, would have no recourse. That is what the bill says. However, if the Senate establishes the process of consultation and appoints the counsellor, this would be more binding on future governments.

I would like to go back to what was originally offered to us by the Leader of the Government in the Senate, Senator Austin. When he spoke on February 24, 2004, I read his words very carefully. Honourable senators will recall that in my remarks the next day I asked him a number of questions concerning them.

We on this side are approximately 20 senators. The government side is approximately 80 senators. I said to myself, how can we possibly have something that is fair given that four-to-one ratio. Senator Austin answered that question in part when he spoke on February 24. He said:

> What I will offer you — and I come here to make this commitment — I will give you a double majority. What I am going to do is let each majority have their say.

He did not elaborate, so I asked him what that offer meant. Does it mean that the government side votes and that they must come up with a majority, and then the opposition side votes? I did not get an answer. What does it really mean?

I said that if we are a small opposition of only 20 senators, that would be fair. If each majority could vote and the decision could be taken that way, there would be no pressure on the minority, which would bring some sense of equality to the process.

The Leader of the Opposition in the Senate, Senator Lynch-Staunton, went to the bible of this place — the Constitution of Canada — and read section 36. He confronted Senator Austin and said that this is not the case.

First, I will read what Senator Austin said on February 24 when he attempted to assuage fears about compromising the independence of the Senate. He said:

> ...on behalf of the government I now make a commitment that prior to sending the Senate the name of any person to be proposed to the Senate to be a Senate ethics officer, the Leader of the Government in the Senate shall be authorized to consult informally with the leaders of every recognized party in the Senate and with other senators and shall be authorized to submit to the Governor in Council the names of such persons who shall, in the opinion of the Leader of the Government in the Senate —

— which gives an absolute discretion —

> — have the favour of leaders of every recognized party —

— and this is the key part —

> — as well as the support of the majority of the senators on the government side and the majority of the senators on the opposition side.

• (2150)

I did not understand that then, nor do I now understand exactly what that means.

I questioned Senator Austin the next day on the concept of a double majority. I asked whether there would be a standing vote or a secret ballot, whether there would be opportunities to interview the candidates and what would happen if there were tie votes in the results.

Last Wednesday, Senator Lynch-Staunton also asked Senator Austin about his suggested requirement of a majority on the government side and the opposition side. Specifically, Senator Lynch-Staunton wanted to know whether this commitment would contravene section 36 of the Constitution — and I quote:

> Questions arising in the Senate shall be decided by a Majority of Voices...

There is no possibility of a double majority. There is no possibility under the commitment made by the Leader of the Government in the Senate to the opposition that we can have that protection. We are left out on our own.

Senator Austin then admitted that his undertaking would not require a vote.

> Rather, it requires a consultation and the approval of both the Leader of the Government in the Senate and the Leader of the Opposition in the Senate, as well as the advice of each that a majority of our respective supporters would support such a resolution.

No vote would be required. Some informal process would take place, but one that provides absolutely no security or protection whatsoever to a minority of some 20 or less in the opposition.

As I said last month — and I repeat it now — for something as important and meaningful as having a proper code of conduct and an independent officer to administer that code in the Senate, we need to have more than a commitment that is not binding.

Professor Gélinas quoted the following from page 610 of Latham's landmark parliamentary reference, *The Law and the Commonwealth*:

> In domestic affairs, agreement rarely, if ever, creates constitutional convention because the usual parties, namely ministers, members of Parliament, the Houses of Parliament and the King, have no moral authority to bind their successors by mere agreement apart from precedent, but in Commonwealth relations, it has long been recognized that the agreement of the executive government of a member binds its successors because it would be derogatory to its autonomy if other members, in order to ascertain their rights and obligations in relation to it, were compelled to examine its internal affairs.

As Senator Austin admitted last week, "no Parliament can bind a future Parliament." However, he hopes "that that might take place."

We need certainty, honourable senators, not hope. Bill C-4 does not provide that certainty. This bill as it is now presented is inherently flawed. It does not uphold the Senate's independence from the House of Commons — and Senator Joyal has aptly and ably made that point on more than one occasion. Although the Senate may refuse the Governor in Council's nomination for the position, the power to select or present choices about the possible counsellor still rests with the Prime Minister. This is wrong. It makes the appointment process too political, and it would taint the ethics counsellor before he or she ever came on board.

The language of the bill creates too much uncertainty, especially with respect to consultation with the Senate. It says that the Leader of the Government in the Senate is authorized to consult informally with other senators about suggestions for an ethics counsellor. Is that the basis upon which we wish to choose the person to oversee conflicts of interest, and so on? However, there is no obligation to do that — that is, to consult informally — according to Professor Gélinas. A resolution of the Senate is still required for a permanent appointment to the position. This roundabout process makes no sense whatsoever to me. Why bother with having the Governor in Council vet the suggestions of the Senate and vice versa?

Last week, Senator Austin also said the following:

> The critical objective is to ensure that the Senate ethics officer both is and is clearly seen to be independent.

Honourable senators, clause 20.1 of Bill C-4 reads, in part, as follows:

> The Governor in Council shall, by commission under the Great Seal, appoint...

Honourable senators, where is the independence in that clear language?

Senator Austin went on to say:

> Let us be clear what independence we are talking about. He or she must be — and must be seen by Canadians to be — independent of us, the people whose conduct he or she will be overseeing.

Honourable senators, which method would better ensure that the Senate ethics counsellor both would be and would be seen to be independent: an ethics counsellor chosen from a list complied by the Governor-in-Council with suggestions by the Leader of the Government in the Senate culled through informal chats with his or her fellow senators, or an ethics counsellor chosen with the consent of all party leaders and ultimately appointed by resolution of the Senate?

Last week, Senator Austin seemed to suggest that the primary role of the Senate ethics counsellor is to oversee the conduct of the Senate in a policing sense and not in a counselling sense. As I have said before repeatedly, this position and the code of conduct are not about creating a criminal or quasi-criminal regime. This is not about censuring senators for conflict of interest. This is not about making us fall in line because we are doing whatever we want. The fundamental purpose of this position and the code is to ensure that the rules are clear, that they are understood by everyone and that, if anyone has a question about the rules, he or she can turn to an independent, impartial counsellor and obtain a reasoned response — not to an individual who has been appointed by the Governor in Council.

Equally important, honourable senators, is that we remember that the Senate has the right to govern its internal operations. There is an important constitutional separation of powers between the judiciary and the legislative branch. The current bill creates a considerable risk, in my opinion and that of Senators Joyal, Grafstein and others, of judicial interference in the actions of the ethics counsellor, directly interfering with the constitutional independence of the Senate and the privileges, rights and obligations of each and every individual senator.

By contrast, Senator Bryden's amendment addresses many of my concerns and, I am sure, the concerns of Canadians as a whole. First, the amendment says:

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

What could be clearer and more correct, given the powers and the separation of this chamber?

Resolution and consent are a far more fair, equitable and trustworthy way to ensure that all of the right people have agreed on an appropriate appointee, rather than simply authorizing someone to informally consult.

Second, Senator Bryden's amendment eliminates the possibility of a prolonged vacancy in the appointment of a Senate ethics counsellor. In the absence of concurrence on the appropriate appointee, Bill C-4 currently enables the Governor in Council to appoint an interim counsellor for a six-month term. For six months, a PMO appointment may make decisions under this bill. What protection is that for anyone?

The proposed amendment, on the other hand, outlines a clear and time-sensitive alternative in the event of a deadlock, and makes eminent good sense. It reads:

> If the position of Senate Ethics Counsellor is vacant for 30 sitting days, the Senate shall, by resolution and after consultation with the leaders of all recognized parties in the Senate, appoint a Senate Ethics Counsellor

It seems right and fair to me.

• (2200)

This clarity and this certainty ensures that ethical oversight in the Senate will never be left in abeyance for an indeterminate time. It will provide the members of this chamber with the peace of mind that their ethical questions can be answered within a reasonable amount of time. Canadians will know that ethical oversight of Senate affairs is one thing they never have to question.

Third, and most important, Senator Bryden's amendment maintains the independence of the Senate. Honourable senators, that is something of which I am proud. It is something which is important to me, and I know it is important to certain other senators. As Senator Bryden pointed out last week, as it stands now, Bill C-4 creates a framework for the institution "that is outside the Senate as we know it."

Under his proposed amendment, however, it is stated that:

> The ethics counsellor will accomplish what needs to be done, objectively and helpfully, for this autonomous and independent chamber, which has been that way for 137 years...

Soon, honourable senators, if we go along with Bill C-4, we will lose what we have had for all those years. It will be swept away and taken over by the PMO. The proposed amendment continues as follows:

> ...without creating a new creature that, once set on its feet and started to run, there is some question as to where it will go...

Like Senator Bryden, I believe that the defence of this institution and its rights, independence and autonomy, is a matter of fundamental principle.

In summary, I believe that Senator Bryden's amendment ensures that the process for selecting a Senate ethics counsellor is fair and equitable. It also provides clarity and certainty about when and how this counsellor will serve this house, and it upholds the independence of the Senate. It will serve to achieve the basic purposes of this new ethics framework, which include the ethics counsellor and the code of official conduct.

These purposes are, first, to assure Canadians that the Senate and its representatives place the public interest ahead of a parliamentarian's private interest by establishing a transparent system by which the public may judge this to be the case; second, to provide certainty and guidance to parliamentarians on how to reconcile their private interests with their public duties; and, third, to foster consensus among parliamentarians by establishing common rules and by providing the means by which questions relating to proper conduct may be answered by an independent non-partisan advisor.

Above all, I believe Senator Bryden's amendment will maintain the trust that Canadians have in the integrity of the Senate. Honourable senators, that is of paramount importance to me, especially in these times when many Canadians are questioning the trustworthiness of government.

As Adlai E. Stevenson, Governor of Illinois, said more than 50 years ago:

> Public confidence in the integrity of the Government is indispensable to faith in democracy; and when we lose faith in the system, we have lost faith in everything we fight and spend for.

Honourable senators, we must do our part to restore the faith of Canadians in the system, in government, in the Senate and in democracy. We must support Senator Bryden's reasoned amendment. We must do the right thing, not the easy thing.

I thank honourable senators for their attention.

Some Hon. Senators: Hear, hear!

Hon. Richard H. Kroft: Honourable senators, it is no secret that I have had concerns about the so-called ethics package for a very long time. I have spoken formally in this chamber, principally on November 6, 2003. I questioned and debated with other speakers and have been engaged with many of you individually and in groups. Clearly, I have been preoccupied with the issue.

On November 27, 2003, along with 46 of you, including 20 of my Liberal colleagues, I voted in favour of an amendment put forward by Senator Bryden that led to Bill C-34 being referred back to the other place.

My commitment to the principles and beliefs set out in my speech of November 6 remain as strong now as they were then.

Like most in this chamber, I support the concept of an ethics officer for the Senate. Having said that, I have serious concerns about some aspects of the office and of the rules that will govern it. Indeed, I believe and have always believed that the heart of the issue lies in the rules. It is in the rules, our rules, that we will succeed or fail in further enhancing the outstanding ethical standard we now have in the Senate.

I place more importance on the officer in the role of advisor or counsellor than as auditor or enforcer. I believe the greatest value of the position, operating on carefully constructed rules, will be to assist in strengthening the existing culture of prudent behaviour in the Senate and thoughtful planning by individual senators in their personal, professional and business affairs. It is absolutely essential in order to gain the full benefit from this new office that we use it to assure at all times that our conduct is personally and institutionally correct, rather than to think of it primarily as a system to investigate and expose what would be very rare cases of wrongdoing. This is a matter of mindset that will be very important as we go about the making of our rules.

Working with the ethics officer, senators would be able with more certainty than now to determine if they have or are contemplating a situation that might call for some action or be reportable. The interaction between the ethics officer and a senator might result in various decisions. It could mean the senator chooses not to undertake a contemplated activity; or, more likely, it could mean that the senator, through whatever means are adopted under our rules, simply reports or declares his or her position on the public record.

The central issue for me is the power of information. Our rules should be designed to show the public in what activities senators are engaged, be they directorships, businesses or not-for-profit service.

With this information clearly reported, the words and actions of a senator can be fairly judged. In some cases it will be clear that a senator should not participate in a debate, a committee or a vote, depending on the circumstances. None of these measures is dramatically new or revolutionary. They exist in parts of our present rules, in other legislative bodies and in ordinary commercial and corporate practice. I have complete confidence that we can produce a regime that is fair, sensible and constructive.

Let me now turn to the bill. Last November, I voted to send Bill C-34 back to the other place because I felt strongly that it failed to meet our needs in some important respects and that its immediate passage was not essential to the government of the day. I believed there was no need for us to pre-empt important thought and debate on the broad ethics issue that only more time could make possible. That was my judgment then and I have seen no reason to revise it since.

Indeed, each day this issue is before us confirms the value of more opportunity for reflection. Now is a different time, however. It is incumbent upon all of us to give sober second thought and to make hard decisions. Thus, we must ask what are the realities today.

For one thing, the broad political context is very different from what it was last November. For a variety of reasons, including issues before the public, changes of leadership of parties and, indeed, changes of parties themselves, the macropolitical environment has been dramatically altered. I believe further debate in the other place at this time would not serve the objective of building a solid ethics regime in either House of Parliament. I am not shy about admitting that our government has other priorities.

Equally, I am quite conscious of the opposition's situation in the other place. While senators opposite might urge us to send the bill back so a few modest changes the Senate wants can be made, I doubt very much their counterparts in that place would take such a benign and constructive view, tidy it up and quickly return it to us. It is hard to imagine a debate in the Commons on an amended Bill C-4 that would be helpful in pursuit of new ethics regimes in either House of Parliament.

• (2210)

Next, I should like to address the efforts the government has made, through the Leader of the Government in the Senate, to help the Senate reach a consensus.

We know where Senator Austin has personally stood on this issue from the beginning. He made that very clear in a public way. I am also satisfied that he has made great efforts, as a member of the government, to close the gap between the limited terms of the legislation and the real and practical meaning of it for the Senate. The government, through his urging, has made some effort to accommodate the needs of the Senate. The fact of that effort, and the understanding that has been gained on all sides as a result of it, again confirms my belief that we were correct last November when we acted to slow the process. Had we not, we would clearly be in a lesser position than we are today.

Where are we now? Is it meaningful to say that we are going to create a convention? That is a debatable proposition but, on the other hand, conventions, like precedents, have to begin somewhere. I do accept as a minimum that it raises the political threshold. A future government would be at some peril in trying to turn back the clock on the Senate. How great the peril will depend on many things, including the public's perception of the Senate at that moment. Each time the process is utilized over the years, if it is, the threshold will be raised yet again. The hope, over time, is to move from accommodation to precedent to convention. That is the case the Leader of the Government in the Senate has brought to us, and I believe it is one that merits our careful consideration.

I repeat, honourable senators: Had the Senate not exercised its independence by amending Bill C-34, none of this thought, debate and government recognition of the Senate's position would have happened. Even acknowledging that the concept of a convention is fragile, had the vote been forced in November, the proposed convention would not exist at all. None of the analysis, debate and declaration of government intentions would have taken place or would have been part of the record. The base that we have to work from, limited as it is, simply would not exist.

All senators, especially those on the government side, should remember these events when we are in the future faced with other difficult decisions about our role and our responsibility, when we again have to choose between quick and easy compliance and rigorous, challenging and sometimes painful exercise of our constitutional duty to analyze, debate, listen and think.

I have reviewed the substance of the legislation carefully, again and again. I have come to accept and, indeed, approve of the rationale for the balance inherent in it that neither side, executive nor Senate, could act unilaterally other than for short term to replace the ethics officer. I also recognize that the Senate has not the power to appoint but the power to block the process by not producing its resolution required under the act. Ill-founded action by either the executive or the Senate in working within this fine balance would carry a high political price. That is the ultimate sanction and the ultimate hope for long-term success.

To bring these remarks to a conclusion, let me point to the obvious: If we pass this bill, everything that flows from it, the appointment process and the entire operation of the system, depends on rules that the Senate, and the Senate alone, can create. Make no mistake: The essential elements to enable and to require the Senate to fill its part of the proposed convention governing the appointment of the ethics officer must be in our rules, ironclad and crystal clear. That remains in our sole power, and a heavy weight rests on us to exercise that power well.

To achieve this will require much wisdom, goodwill and good management. This government must keep its promise, and future governments must follow what today can only be characterized as a potential convention. In time, it can become more. In turn, the Senate must do its part by creating a culture and practice through the careful development of our rules and then living by them.

Honourable senators, I cannot emphasize enough that we have no deadline to meet in drawing these rules and no pressure other than to do it right. All of this is far short of the certainty I would like to see. It is a path that shows promise if it works and guarantees political pain for future governments and institutional challenges for the Senate if it does not.

Looking carefully at the entire situation before us today, balancing aspirations with realities and hoping for wisdom and goodwill, I am prepared to vote for the passage of Bill C-4 without amendment.

Hon. Senators: Hear, hear!

The Hon. the Speaker: For clarification, I know that Senator Harb wanted to speak.

Senator Cools, were you going to put a question, or did you wish to speak?

Senator Cools: I want to ask a question.

Hon. Gerry St. Germain: Honourable senators, my question relates to what the honourable senator said, namely, that his decision has changed because the political landscape has changed

from November to now. In looking around this place, I see no change, of any great dimension. I have always been, and I will always be, a Conservative. I just had to effect something that was better for the country, namely, a viable opposition — something you people do not really want, and I do not blame you.

Senator Austin: We want you to be a viable opposition.

Senator St. Germain: I find it strange that the political landscape — and correct me if I am wrong — has changed your thought process on something that is so fundamental to this institution that we should be the masters of our own house instead of capitulating to a prime minister or a Governor-in-Council, or whatever. Regardless of the leader — Stephen Harper, Joe Clark, or whoever — I would not think you would find that acceptable, given that Senator Bryden has brought forward such a thoughtful and reasonable amendment.

Senator Kroft: Two things have changed my mind. First, there is the political landscape — which is highly relevant. When I voted in November, we all knew the circumstances. As I said in my speech, my thought and my hope was that, in the end, it would prove not to be an essential piece of legislation for the government and that, either with that government continuing or with a fresh government, there might be an opportunity for the introduction of the subject in a fresh way in Parliament. I would only send it back there if I felt there was a reason to expect we might get it back in better form. I no longer have that confidence.

More important, honourable senators, there is something more fundamental. Probably the most fundamental thing in my change of mind is that, after a great deal of study on the subject, I have come to the conclusion in the broad context for this institution — and this is not my narrow wish, if I could necessarily say what I would want to make a personal decision for me — and in the broad context socially, there is greater strength in the end in achieving some of the balance in the system that comes from the Senate playing a main role and the executive branch playing a role and both being able to either stalemate or make the case successfully.

When I look at both Senator Bryden's amendment and at my own thinking, back when I was so taken with the presentation of the late Lord Williams and his associate, I was then more persuaded with the idea of simply taking one of our own. We were quite general in whether it would be a clerk or a staff member or someone else. We would give that person whatever functions we wanted. Following down the line of the British model, I was taken by that.

Over the months, however, as I have listened, studied, read and listened again — and thank God we have had more debate — I have become more persuaded that there is greater strength not only for the public and for Parliament but also for the Senate itself in the balance that is achieved in this situation if we are successful at that tricky act that we are trying to perform through the creation of a convention. That is really another way of saying that the creation of a convention in this case is a willingness to rely on good sense and goodwill.

• (2220)

The Hon. the Speaker: Senator Cools wanted to put a question but Senator Kroft's time has expired.

Senator Kroft is asking for more time. Is leave granted, honourable senators?

Hon. Senators: Agreed.

Hon. Anne C. Cools: I was listening to Senator Kroft with some care, particularly on the question of conventions. Not recently, but in my lifetime, I have done a fair amount of study on conventions. Frankly, just wishing to create a convention does not instantly create one.

My question for Senator Kroft has two prongs. Conventions are a political morality, so to speak, which guides governments to be ethical and true and faithful to the principles of parliamentary independence and ministerial responsibility. How can the government or anyone rely on a convention to overcome the principles of independence of government? Particularly, we can look at the clause in the bill that I call "the removal clause," which states that the Senate ethics officer may be removed for cause by the Governor in Council on address of the Senate.

I am asking Senator Kroft to clarify that there is no such thing as an address to the Governor in Council. An address is the mode by which either of the chambers speaks to Her Majesty the Queen. Most statutes say addresses to the governor or to the Queen. How can a convention be used to overcome such a fundamental notion as the independence of Parliament and the right of Her Majesty as a member of the Parliament to be petitioned by the form of an address? An address is a peculiar parliamentary instrument.

Honourable senators, the scripting of the removal clause does not dignify the Senate enough to even say the Governor General. It says the Governor in Council. It has not even disguised its intention. Could Senator Kroft help me comprehend this almost dialectical problem?

Senator Kroft: With respect, senator, your speech stands for itself.

Hon. Mac Harb: Honourable senators, this is, in a way, my first speech in this place.

I had a chance to make a statement to thank the former Prime Minister for making the excellent decision to appoint so many wonderfully talented men and women to this house. I had a chance to talk about one of the first projects that I will be introducing in the Senate in order to deal with the democratic deficit that our esteemed Prime Minister has been talking about; that is, to ensure that Canadians demographically, whether young or old, can collectively choose their elected officials, similar to the process that is found in Australia and around the world in over 30 countries.

The second chance I had to speak in this Senate was on a bill that was brought forward by the government to the Senate. I must admit, my remarks were typed up, neatly done and prepared. Therefore, I did not have to use my brain.

When I first was appointed, I was asked what I thought about the difference between the Senate and the House of Commons. I had to reflect a bit. There is one thing: In the Senate, for the first time, I really had to use my brain. In the House of Commons, I did use it but I really did not have to. In my case, I had a government that was doing much of the thinking for me — an intelligent government, a government with a vision, a government with a fantastic agenda. To that extent, everything was like being on autopilot.

Suddenly, I come to the Senate and I see some of the fascinating proposals that are coming from the other House, such as the ethics bill. I see some of my intelligent colleagues here trying to block that bill. Suddenly, I am second-guessing things. Really, what is going on here? We have a lot of intelligence in this place. Why are we not letting this legislation go through, despite the tremendous amount of intelligence?

Senator Oliver spoke earlier about the importance of having an ethics package that reflected on and responded to public demand. I want to thank him because, when I was in opposition about 12 years, it was Senator Oliver, along with Speaker Milliken, who introduced the package to parliamentarians to respond to the whole notion of ethics issues. It took about 12 years before we saw something finally come before us as parliamentarians.

I want to say this to honourable senators. I have seen what the committee was working on. I am not comfortable with it for many reasons. We have had a chance to study the ethics package, and some feel it is not perfect in terms of the rules that govern parliamentarians.

Do you know what? We are not dealing with the ethics package or the rules or the regulations. We are dealing only with the establishment of the office of the ethics counsellor. That is it — nothing more, nothing less.

What is the problem? I cannot see why we will not let it go. Look around. Name one single person in this house who has not been appointed by the Prime Minister of this land. Each one of us is a creation of a prime minister, be it the present one or a former one.

Look at our officers in this house. The Speaker of the Senate is appointed. Our clerk and our government leader are appointed. Look at the other House. Look at our Governor General.

Senator Kinsella: She should be elected.

Senator Harb: All these are wonderful appointments. By and large, the vast majority of these appointees have served us well. No one in this house can tell me that the Auditor General of this land, who is an officer of Parliament, is biased. No one in this house nor anywhere else can tell me that the Chief Electoral Officer, an officer of Parliament, is biased. No one can tell me that the Information Commissioner, an officer of Parliament, is biased. Each and every one of these individuals has served this country well.

Honourable senators, let us calm down. Let us look at the bill before us and let the legislation go through.

Senator Oliver said something extremely important: When we look at the echelons, the ranking in terms of public trust and confidence, politicians are at the bottom of the food chain. Frankly, honourable senators, if we do not let this legislation pass, we will be feeding into that frenzy. We have to let it go. When the time comes for us to select and establish the rules that govern, the rules that this ethics officer will have to use to do his or her job, then we can think things through and do the best possible job we can.

Between now and then, we have the possibility to study a mechanism whereby we could ensure that we have a convention in place that is respected and carried from one government to the next.

• (2230)

I agree with Senator Oliver when he indicates that the present Leader of the Government in the Senate cannot oblige a future Leader of the Government in the Senate to follow through. I also agree with the notion of some of our colleagues, which has been mentioned in the past, that this government cannot dictate to future governments what they can do and compel them to consult. As long as it is not provided for in an act of Parliament, a future government is not compelled to do anything. That is a fact.

We all understand rules and procedures. The other House follows rules and procedures as does this house. When the Speakers of both Houses of Parliament rule on issues, they always look to and rely on precedents. If we can appoint individuals, then, of course, we can remove an individual. We can also ensure that there is a mechanism in the rules to trigger such an action in the event that the wishes of this Parliament are not taken into consideration when the appointment is made. I would suggest that the very capable lawyers in this house can come up with ideas and suggestions to ensure that this house is consulted.

Honourable senators, do not for a moment believe that it would be serving the public interest for us, as an unelected body of Parliament, to turn around and deny the peoples' representatives in the other House the passage of this bill. After all, they are the ones who will be going out to face the electorate. What do we expect them to do? Should they go out and defend us and say, "The senators are upset because we are not allowing them to appoint their own counsellors"? I do not think that will wash, honourable senators. If anything, we will turn public opinion against politicians of all stripes, not only against ourselves, but also those in the other House.

I would suggest that those who are having difficulty with this bill should swallow their pride and let it go. Notwithstanding all of the difficulty we have, let it go, and bite on something more substantial when it comes to the rules governing this proposed ethics counsellor. We can then put our energy and intelligence towards developing rules with which everyone can live, rules that reflect the wishes of parliamentarians in this house. For us to do otherwise would, frankly, be undemocratic. We just do not have the right to block something that comes from the other House.

I must admit that, perhaps, the other House should have divided the bill into two. However, I am not here to second-guess what the other House is trying to do or not do. I am simply saying that it is an opportunity for us to show we are gentlemen and gentle ladies. Let this bill go through, and let us move on to the next piece of work.

Senator Stratton: You can turn it off again now.

Senator St. Germain: Honourable senators, I have a question for the senator who just spoke so eloquently. Is Senator Harb saying that we should not block anything that comes from the other place — that is what I understood him to say — regardless of whether it is right or wrong?

The honourable senator stands here and defends a bill based on the role of the ethics commissioner who operated in the other place, one Howard Wilson. He is prepared to stand here and expect us to swallow our pride. Does he realize what we will swallow all over Canada if we do this? We will hear a hue and outcry from the public that will resonate from the extreme east coast of Newfoundland and to the far extremes of British Columbia and as far south and north as you can go. Is the senator telling us that we should not block anything that comes from the other place and swallow our pride?

Senator Kinsella: Good question.

Senator Harb: Absolutely not, honourable senators. I started by saying this is a wise chamber. I said that this is the house of sober second thought. I also said, honourable senators, that we received a bill from the other place, that we had an opportunity to debate it and amend it. We made suggestions, and it was returned to the other House. The other House dealt with it with as much finesse and intelligence as possible and sent it back to us. We have to make a decision or a choice now.

Frankly, honourable senators, it is not a secret that we may end up going to the voters at some point in the near future. A parliamentarian going into the streets of Ottawa Centre campaigning would use the fact that the Senate blocked a bill from the House of Commons as a single issue to attack the credibility of the Senate of Canada. That is certainly the one issue I would use if I were campaigning. To that extent, I would say yes, we should let it go through; but, no, we should not swallow our pride. We will have time to deal with the legislation later.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I am very interested to hear that a former member of Parliament, who was in the other House for so many years, is now finally allowed to speak for himself, but having heard him, I wonder if perhaps he might want to reconsider that freedom.

My question to Senator Harb is: Will he be a better senator with the passage of this bill? What difference will it make in his life? Will he be more ethical, more loyal, more honest, more committed? What is the importance to him of this bill?

Senator Harb: Honourable senators, this is not only about me. This is about parliamentarians; this is about public cynicism; and this is about responding to public cynicism and dealing with issues of transparency. I agree with my colleagues. You cannot legislate ethics. You either have them or you do not. I do not second-guess any of my colleagues. Each and every one of them has ethics and good morality.

We have here a bill that deals with the other House as well as with this one. We cannot pick and choose. We do not have the luxury at this point in time of saying, "I do not want this; I want that." At the end of day, we are all the same creatures of the same animal. We are all appointed, each and every one of us. We were all appointed by the Prime Minister of the land.

To that extent, I would say to my colleagues, in answering whether this particular piece of legislation will make things better: Maybe for some, maybe not for others. Is it needed? The answer is yes. Should it pass? Absolutely. Should we vote for it? Yes.

Senator Lynch-Staunton: Honourable senators, my question was simply: How will we be better parliamentarians with the passage of this bill? I can tell the honourable senator, quite frankly, that I am against the bill, but not because I am against ethics. I am against being offended by the fact that I have to be challenged in my integrity and honesty. If this bill had been law at the time that Brian Mulroney had asked me to become a senator, I would have had second thoughts before accepting. Never in public life have I been so challenged as this bill challenges me. It challenges me to divulge everything. It challenges my wife to divulge everything. For what purpose? Is it to titillate people? Is it to allow certain information to be leaked out?

Senator Kinsella: Voyeurism.

Senator Lynch-Staunton: Voyeurism, exactly. What else is being served by this bill, particularly given its authorship? After 10 years of milking the system, someone has said that we have to be pure. Senator Harb is part of that. I would ask him now: Should this bill pass, how will he be a better senator, and how will I be a better parliamentarian under its jurisdiction?

• (2240)

Senator Harb: Honourable senators, without exception, every Parliament in Canada and every democracy around the world has some sort of an oversight. I would want to suggest to my colleague that having an ethics counsellor does not necessarily mean taking away or second-guessing his integrity. It does not mean second-guessing his ethics or his morality. An ethics counsellor is a way of responding to the institution, to public demand, dealing with issues in a transparent way so that everyone understands what we are talking about, and setting rules to govern the way we do things. Maybe he, I and every other senator are okay at this time; however, there is one bad apple in every barrel, and we must ensure that that one bad apple does not cast a shadow on the integrity of other senators.

The Hon. the Speaker: I regret to advise that Senator Harb's time has expired.

The next speaker on my list is Senator Mercer.

Senator Kinsella: I move that Senator Sparrow be allowed to speak next.

Hon. Terry M. Mercer: Honourable senators, I should first like to thank Senator Harb for warming up the crowd.

The Hon. the Speaker: It is moved by the Honourable Senator Kinsella, seconded by the Honourable Senator LeBreton, that the next senator to be seen not be Senator Mercer but that it be Senator Sparrow.

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker: Honourable senators, let me put the question as I should.

Would those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Would those honourable senators opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

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

Senator Mercer.

Senator Mercer: Honourable senators, as I said earlier, I should like to thank Senator Harb for setting up my speech tonight.

Honourable senators, public confidence in government is essential if we, as parliamentarians, are to ensure the validity of the political process. Ethics and integrity are at the core of public confidence in government. The institutions of government are required to set the highest objective standards in order to strengthen the support and respect of Parliament.

When I was asked to become a senator, one of first things I did in looking at legislation was to commit myself to support Bill C-4, and I still do.

Politics is about perception, honourable senators. People vote on perceptions, not necessarily on realities. If we vote against Bill C-4, we are voting against ethics and integrity — or at least that will be the perception. I realize that this is not what motivates some of you to oppose the bill, but that is what the Canadian public will perceive and that is what our opposition will tell them — our opposition to those of us in the Senate.

I submit, honourable senators, that this is an opportunity to clearly define the importance of this place in the eyes of those who would seek to destroy the very foundation on which it stands. Bill C-4 is not a measure intended to weaken this place. It is an opportunity to preserve the Senate's reputation for honesty in public service. I can think of no better reason to support the principles of this bill.

We need to develop a code of conduct; we need an independent officer to administer this code; and we need to restore the faith of the most important people in government — its citizens. Bill C-4 strives to fulfill all of these goals.

I am sure that opposition members in both places would savour the defeat of this important piece of proposed legislation. However, I would remind those honourable senators that the candidates in the upcoming election running for our party will be confronting the candidates running for other parties and asking one simple question: Why did you not support the ethics bill in the Senate? Quite frankly, honourable senators, you cannot talk the talk unless you are willing to walk the walk.

Elections are won or lost depending on how 308 candidates are perceived by the public. Voting in favour of this bill is an opportunity for each of us to send a message that government operates with the highest regard for ethics and integrity. Not to do so would be a disservice to the Senate, a disservice to the 308 candidates in the other place and a disservice to Canadians.

Senator St. Germain: Honourable senators, I have a question for Senator Mercer. The honourable senator implied in his speech that one can legislate ethics and integrity. He made mention of establishing a code of conduct and getting a commissioner, and extends this into the next election. I do not know what that has to do with this place. We are not elected. If we are doing it to hoodwink the public into believing we are doing something, that is totally wrong.

I have been in this place for 10 years; others have been here 20 years; and Senator Lawson has been here for more than 30 years. I do not see anything questionable in their integrity or their ethics.

I listened to the honourable senator's speech. I know he has been deeply involved in political organization, but does he honestly believe that we should be passing legislation for the sake of presenting to the Canadian public something that possibly does not really exist?

Senator Mercer: Honourable senators, I thank the honourable senator for the question. As I said in my speech, this is about perception. The perception in public today is — and it has been this way for a number of years — that people who participate in politics, whether in this place, in the other place, in provincial legislatures or in other democratic institutions across the country, are not ethical. I would contend that that is not the case. I do not know anyone in this place or the other place who is unethical. I am fortunate enough to know all honourable senators, and I am also fortunate to know a large percentage of the people in the other place. I believe everyone in the business is ethical, but the perception of some members of the public is otherwise. Our job is to tell the Canadian public that not only are we ethical but here are the standards by which we will be judged, if someone were to say that we are unethical.

As a professional, I have a code of conduct and ethical rules and practices that I have to follow, and have done so for all of my professional life. It is only right that this institution have the same.

Senator St. Germain: Honourable senators, we do have rules and regulations in this place. We have a code. We have the rules and regulations that we must live by.

Senator Lynch-Staunton: And the Criminal Code.

Senator St. Germain: The honourable senator talks about perception. In my eyes, and in the eyes of most Canadians, it will be deception, not perception.

Senator Austin at one time was opposed to the legislation. Now that he has taken on the role of Leader of the Government in the Senate, God bless his soul, he has to toe the party line.

Does the Honourable Senator Mercer actually believe that this will not be perceived as deception as opposed to the perception that he is trying to project?

Senator Mercer: Yes.

The Hon. the Speaker: I did not see Senator Sparrow earlier. I thought he was rising for a question, which is why I saw Senator Mercer.

Did you wish to speak, Senator Sparrow?

Hon. Herbert O. Sparrow: Honourable senators, no, thank you, but it is very kind to ask. I was going to ask a question, which was refused by this side of the chamber. I had hoped they would give me the opportunity to ask a question. Perhaps another time I will be able to ask a question.

Senator Cools: Honourable senators, I rise to support Senator Bryden's amendment.

• (2250)

Honourable senators, the first principle is that Parliament and its members are not to be subjugated or subordinated to the servants of the Crown, that is the King's ministers, counsellors or judges, for any reason whatsoever. From 1689 on, Parliament set out in practice and statute to banish office-holders and Crown servants from its bosom, both as its members and as its personnel. In Canada, these acts were called the independence of Parliament acts. Our own Parliament of Canada Act was created to do this. Its first planks were these several independence of Parliament acts. These acts form the Senate and House of Commons Act, the predecessor of the Parliament of Canada Act that Bill C-4 would amend. These acts banned office-holders and Crown servants from sitting and voting as members of Parliament. Until 1931, cabinet ministers had to resign as members of the House of Commons and seek re-election. Ministers, Crown servants and office-holders could not be members of the House of Commons without their constituents' agreement.

Honourable senators, the revolution and its settlement act, the *Bill of Rights* in 1689, laid out these constitutional notions that are the foundations of our Constitution, saying that the King used his Crown servants to subvert the liberty of the realm. It said that the King:

> ...by the Assistance of divers evil Counsellors, Judges and Ministers employed by him, did endeavour to subvert...the Laws and Liberties of this Kingdom.

Parliament and its members are to be free from coercion by the Crown office-holders, in short, free from the pleasure or displeasure of the King, today the Prime Minister's Office. Our Constitution bans office-holders from Parliament except under severely proscribed conditions. The proscribed conditions are ministerial responsibility and also the terms and conditions of the appointment of Parliament's own officers.

Honourable senators, Bill C-4 is a corruption of the Parliament of Canada Act itself. It is contrived to defeat that act and to defeat constitutional law from 1689 as embodied in Canada by the British North America Act, 1867. Bill C-4 also contrives to defeat Parliament's own law, the law of Parliament.

Honourable senators, I wish to speak to the Senate ethics officer, its tenure of office, its removal from office and its financial accountability.

First, financial accountability: Bill C-4, by clause 2, amending section 20 of the act, proposed sections 20.4(7) and 20.4(8), will place the determination of the Senate ethics officer's budget and financial actions beyond the reach of the Senate. This is most unparliamentary. The Senate will have no role, no administrative supervisory or constitutional role, in determining the budget of its own so-called ethics officer. This officer will be able to write a blank cheque. In fact, this Senate officer's budget process wilfully shuts out the Senate, unlike the budget process of the other Senate

officers. The other Senate officers' budget needs are proposed as part of the Senate's total budget, the total appropriation. The Senate's sole option on this officer's estimates would be an adverse vote and its political consequences. Such adverse votes are rare and in this instance would not be practicable. Therefore, this ethics officer, in practical terms, will have a blank cheque decided solely by the President of the Treasury Board and the officer. Bill C-4 contrives the finances of this officer to be beyond the reach of the Senate. This is objectionable, unusual and it is not Parliament's control of the public purse.

Honourable senators, I come to the very important matter of the appointment and tenure of this ethics officer. The Leader of the Government in the Senate, Senator Austin, has told us that the Senate ethics officer is exactly the same as the other Senate officers and that this new appointment is consistent with constitutional principles. In fact, on March 24 I put questions to him directly about the Senate ethics officer as compared to one of our Senate officers, the chief one, the Clerk of the Senate. Senator Austin is quite wrong and I propose to show honourable senators how and why. I propose to show that this position is most unlike that of the other Senate officers and is a novel creation, totally novel. I will also show that it is more lucrative and powerful than that of the other Senate officers. It will be at the top of the heap. In fact, it is not a Senate officer at all but some new constitutional creature that I choose to call a parliamentary Godzilla.

Honourable senators, I shall compare the tenure of office, the salary and the terms of the appointment of this new Senate officer with the Clerk of the Senate. The Senate clerk is also the Clerk of the Parliaments, as the Clerk of the Commons is the Under-Clerk of the Parliaments. Further, the Senate clerk is the chief of all the Senate officers and has charge of all the Senate staff and the day-to-day staff operations. He is also the custodian of our records and the endorser of our proceedings. Whereas the proposed new position has a tenure of seven years with a possibility for renewal and for removal from office by address of the Senate, our Senate clerk's tenure is during pleasure with no fixed term of appointment or renewal. Further, his removal from office is not by address at all, as Senator Austin wrongly said a few days ago. Our clerk's removal is at pleasure. He may be removed at a moment's notice without notice to him or this house. This new position is quite unlike that of our clerk.

On the question of rank and salary, our Senate clerk, unlike the proposed new position of ethics officer, does not have the rank of deputy minister. Neither does he have a deputy minister's salary. The Senate clerk's salary is lower than that of a deputy minister's salary. Further, our clerk's budget and financial needs are prepared and submitted to the Standing Committee on Internal Economy, Budgets and Administration and are processed and described as a part of the Senate's total budget, which is voted on and approved by this house prior to submission of the President of the Treasury Board, all quite unlike this new proposed Senate ethics officer.

Honourable senators, I come now to the all-important terms of the appointment of the Senate clerk. Parliament has no power to appoint its own officers. These office-holders are appointed by the Queen using different royal instruments. The Queen is the enacting power that gives statutes the force of law. So too it is the Queen's commissioned power that gives appointments their legal force. Centuries ago, Parliament needed personnel with the legal force that only the King could give, but Parliament was hostile to office-holders. This is a thorny constitutional question. The power of the King was needed, but the personal control of the King through his servants, office-holders, was unwanted. Parliament needed officers who were legally viable to do its work, yet such legal viability, then as now, could only be found in the King's appointment, in the King's royal grant of power.

Parliament's need of legal power for its officers and its aversion to Crown servants both needed to be satisfied. Both constitutional questions had to be resolved, particularly in those days when house officers, our clerks, were sometimes also members of Parliament.

Honourable senators, this constitutional resolution was achieved in the 1700s by the modifications of the terms and conditions of the appointments of the House of Commons officers and their prescribed oaths. These officers' oaths of office are definite expressions of the law in which the King's intention in his letters patent and the duties of the House officer are both joined. Parliament for centuries has prescribed the oaths to be sworn by the great officers, who include the Clerks of the Senate and of the House of Commons.

Honourable senators, Senate records show this. Specifically, on March 15, 1994, Speakers Roméo LeBlanc informed us that Paul Bélisle had been appointed Clerk of the Senate and the Clerk of the Parliaments. On parliamentary usage, Speaker LeBlanc said:

> Honourable senators, I have the honour to inform the Senate that, by the usage of Parliament, the Clerk of the Senate is required to take the oath of office before the Honourable the Speaker of the Senate.

The *Debates of the Senate* tells us that same day that "The oath of office was administered by His Honour the Speaker."

Honourable senators, our clerk's oath dates back to at least the 1700s. Its origin is not the oath of the U.K. Clerk of the House of Lords, but it is that of the U.K. Clerk of the House of Commons.

• (2300)

The *Journals of the Senate* that same day reported Paul Bélisle's oath, that:

> Ye shall be true and faithful, and troth ye shall bear to Our Sovereign Lady Queen Elizabeth the Second, ...

The Journals continued to the critical portion of the oath of the Clerk of the Senate:

> Ye shall also well and truly serve Her Highness in the Office of Clerk of the Senate of Canada, to attend upon the Senate of Canada, making true entries and records of the things done and passed in the same.

Honourable senators, the Clerk of the Senate attends upon the Senate. This lengthy oath ended:

> Ye shall well and truly do and execute all things belonging to you to be done appertaining to the Office of Clerk of the said Senate. As God you help.

Honourable senators, the Clerk of the Senate swore an oath of the great officers, which is a constitutional complement to his letters patent. His appointment is a grant of office, which grant is modified to meet Parliament's constitutional and representative role. The grant of office places a condition on the Senate clerk. That condition is to serve the Senate; that is, to "attend upon" the Senate. Our clerk is a Crown servant, but simultaneously he is a Crown servant who is pledged to be the servant of the Senate. Our Senate clerk is the Queen's grant of office. He is a royal gift to the Senate. This affirms the Senate's independence.

Honourable senators, the origin of the oath of the Clerk of the Senate is a constitutional accommodation between the King and the Commons. Our Senate clerk's oath is exactly the 1700s House of Commons clerk's oath in the U.K. The words are the same except that the "Senate of Canada" is substituted for "Commons." The words of the oath of the 1700s Commons clerk were:

> Ye shall also well and truly serve His Highness, in the office of "Under Clerk of his Parliaments, to attend upon the Commons..."

The critical words are "attend upon," as distinct from "attend at" or simply "attend." The literature shows the distinction.

Honourable senators, in musing that the Senate clerk is prescribed to swear an ancient U.K. House of Commons clerk's oath, we must recall that by the Constitution Act, 1867, section 18, both the Senate and the House of Commons powers and privileges are those of the U.K. House of Commons. Our Senate clerk is a peculiar Canadian constitutional entity. He is styled the Clerk of the Parliaments after the U.K. House of Lords clerk, but his oath is an ancient U.K. House of Commons clerk's oath.

The Senate and the House of Commons clerks of Canada were constituted as gifts of the Crown to the Houses on the condition that they became the servants of the Houses. It is not accurate to say that this appointment of the Senate's ethics officer is the same as all other appointments and that it is the same as this one. Clearly, it is not the same. Clearly, the mode of appointment and the mode of the oath were developed over centuries to reflect the constitutional development of the institutions.

Honourable senators, that is why I am prepared to say that Senator Austin is wrong and that Senator Bryden is right. Senator Bryden's amendment to say "counsellor," rather than the creation of an unknown officer, is truer in fact to the constitution of the Senate and to the notion of the independence of the Senate. I would support it because I believe that Senator Bryden's amendment is truer. Given that it is inherently true, it lends itself to the promotion and the support of ethical behaviour.

Honourable senators, there has been much talk about optics and appearance. I find myself dismayed when told that Bill C-4 is needed because it will form part of a communications package or part of a public relations package. That causes me a great deal of concern because for centuries we had distinct ways of obtaining ethical behaviour. One way, for example, was to uphold the notion of the oath of allegiance, which used to govern most ethical behaviour. This bill bothers me; and it bothers me that the concerns of the Senate have not been contemplated.

Honourable senators, there is no bill and there is no piece of legislation that could create one single ethical person. The question of ethics as a question of morality and the question of integrity, to my mind, are the cornerstones, if not the anchor stones, of public life. The methods by which we create and sponsor ethical behaviour are by being true to the institutions, to the principles, to the convictions and to our oath. If one were true, one would find that from truth alone a certain kind and quality of ethical behaviour would flow.

[*Translation*]

Hon. Michel Biron: Honourable senators, on behalf of the government, the Honourable Jack Austin, the Leader of the Government in the Senate, has officially given his commitment that the Prime Minister would consult the Senate before appointing an ethics counsellor. However, a subsequent Prime Minister could, if he so chose, decide not to honour that commitment. It might not be Christian or kosher, but it would be legal.

In practice, this commitment recognizes implicitly that the Senate was right to want to appoint its own ethics counsellor. If it was the government's firm intention to engage such a counsellor, present or future, why not include this in Bill C-4? Why has it not agreed to the Senate's majority amendment? Since the Prime Minister is in favour of the division of powers, a decentralized decision-making process and increased responsibilities for parliamentarians, why not take this unique opportunity to apply this principle and agree to the majority amendment adopted by the Senate? If it had done this, we would not be here today discussing it.

The problem with Senator Austin's commitment is that it does not bind subsequent governments and that is why I will support this amendment.

Senator Bryden's amendment in no way modifies or changes the way in which an ethics counsellor will be appointed to the House of Commons. It merely determines who will appoint the ethics counsellor to the Senate.

If, in selecting the ethics counsellor responsible for oversight of him, the ministers and members, the Prime Minister takes his inspiration from the Holy Spirit in making his choice, how can we, the senators here in this conclave, if I may so put it, not make a choice that is equally informed?

• (2310)

Contrary to what some senators might think, having an ethics counsellor chosen by consensus of the Senate rather than by someone at the other place only raises the bar of security for an ethics counsellor. The appointment of an ethics counsellor by the Prime Minister does not necessarily mean the latter will interfere. However, appointment by the Senate certainly ensures the independence of the counsellor and the Senate vis-à-vis the head of the government.

The Senate, I am convinced, clearly and firmly supports the government's efforts to have an ethics counsellor and an ethics code. Following the concerns expressed by Canadians, the government needs to implement clear rules of conduct respecting public ethics in the other place. At no time does the amendment affect this bill with respect to the other place. We must pay attention to public perception of the Senate. Some have a negative perception of the fact that we are appointed. Some even find that we are unnecessary. However, no one perceives senators as dishonest or lawless people. Others, on the contrary, recognize the need for and integrity of senators.

The amendment will not diminish this perception in any way. Perhaps it will emphasize that the need for a very clear code of conduct stems from the actions at the other place and does not result from bad governance in the Senate. The fact that we have put forward an amendment whereby the consensus of the senators will be required for choosing a counsellor raises the bar higher than if the Prime Minister alone made the choice. The public will perceive this action by the Senate as an improvement to this bill. It is up to honourable senators to make this happen.

A Father of Confederation and a reformer, George Brown, defended the usefulness of the upper chamber in these terms:

> We wanted to make the upper chamber a perfectly independent body, an organization that would be in the best position to review objectively the measures of this House and to protect the public interest against any premature or partisan legislation.

If the Senate is appointed and not elected, it is to allow it to judge without being influenced by trends, partisanship and electoral considerations.

When I asked Senator Sparrow, "If my survey showed that those who support the amendment are in the minority, what would you do" he immediately replied, "I will support the amendment, because it is a matter of principle."

I told myself: Here is a senator who can stand up, a senator who is not influenced by electoral considerations, partisanship, fear, scaremongering or a concern that the public might misunderstand the amendment.

I know that, with a few exceptions, senators who supported the amendment last fall will support it again, because there is nothing in Bill C-4 to make them change their mind.

Do what you have to do and justice will prevail. Honourable senators, we are talking about the principles of independence of the Senate and the rights of our institution.

With this amendment, we senators are showing that we care about ethics and that we are sensitive to this issue.

The professional qualifications and the integrity of the ethics counsellor will be thoroughly examined before any appointment by the two leaders in the Senate.

I cannot see how, after these discussions and once the decision is made, the leaders would revoke the appointment for trivial reasons.

In fact, Senator Bryden said that it would be impossible for the Senate to fire the ethics counsellor for frivolous reasons, because he would be appointed for a fixed term and his appointment could only be revoked with cause, with the consent of the leaders of the parties recognized in the Senate, and through a resolution.

The Fathers of Confederation wanted an independent upper chamber where senators could express themselves freely. They wanted a completely independent upper house.

Thus, I believe that from the time I accepted the appointment as a senator, and because I now am a part of this political body, the upper house, I feel obliged to protect its role and defend its rights. For these reasons, honourable senators, I shall vote in favour of the amendment.

On motion of Senator Rompkey, debate adjourned.

[*English*]

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Mobina S. B. Jaffer moved second reading of Bill C-22, to amend the Criminal Code (cruelty to animals).

She said: Honourable senators, I am pleased to be able to speak to the provisions of Bill C-22. Senators will no doubt remember this legislation that was before us in the last session as Bill C-10, when it was combined with the amendments in relation to firearms, and then Bill C-10B when the two portions were split. What were the objectives of the bill?

[*Translation*]

The primary goal of the bill is to modernize and simplify the law by establishing clearly and concisely the legal criteria for the two major categories of offences: acts of wilful cruelty and acts of criminal negligence causing pain, suffering or injury to animals.

The legal criteria have not changed. In fact, the drafters have been careful to use the same language as the Criminal Code so that the legal questions of responsibility remain unchanged, while modernizing the act. Another purpose was to remove the distinctions that go back to another century and mean that the protection varies with the type of animal.

• (2320)

For example, in terms of certain existing provisions in the Criminal Code, the status of an animal as a chattel determines whether prosecutions will be successful or not, although the provisions fundamentally aim to protect animals against wilful cruelty and criminal negligence.

These distinctions are illogical and incompatible with the purpose of the law, as it has existed since 1953, namely, that all animals must be protected against pain, suffering and needless injury.

• (2320)

[*English*]

The second goal of the amendment is to increase the penalties for animal cruelty offences. The way society traditionally recognizes the seriousness of particular conduct is through the penalty that it prescribes for that conduct.

The current maximum penalty for animal cruelty, no matter how barbaric or heinous, is six months in prison. Canadians have been loud and clear that this penalty is simply too low. Bill C-22 will substantially raise the penalty for intentional cruelty by making the offence a hybrid offence, and by raising the maximum penalty for an indictable offence to five years and for a summary conviction offence to 18 months.

This flexibility will permit the Crown to tailor the penalty to the circumstances of the particular case, and will signal to judges, prosecutors and the general public that cruelty offences are serious cases of violence.

In 1978, in the leading case of *Ménard*, Mr. Justice Lamer clarified the policy of the law and the essence of what is animal cruelty. The law recognizes that animals can be used for a variety of purposes to satisfy human needs, but also requires that animals should be treated humanely and subject to no more suffering than is necessary to achieve those purposes.

[*Translation*]

With respect to cruelty and the violence link even greater societal interest would be served by the provisions of Bill C-22. There is increasing scientific evidence of a link between animal cruelty and subsequent violent offences against humans, particularly in the context of domestic violence.

Questionnaires administered to battered women in Canadian shelters indicated that 75 per cent of battered women who had pets reported that their aggressor had also injured or killed one or more of these pets.

[*English*]

Mistreatment of animals can have a devastating psychological impact on children forced to witness brutality toward animals they love.

Our judges, health professionals and law enforcement officers are beginning to recognize and address animal abuse as an aspect of a bigger problem of violence in our society. Bill C-22 provides Parliament with the opportunity to adopt legislation that recognizes the true nature of animal cruelty as a crime of violence.

These amendments represent the first major overhaul of cruelty to animal sections of the Criminal Code in over a century. Let me remind senators about some of the history of these amendments.

[*Translation*]

Parliament has had a bill to amend provisions on animal cruelty before it in one form or another since December 1999. First there was Bill C-17, an omnibus amendment of the Criminal Code, followed by Bill C-15, another omnibus bill that got divided in the other place, with the provisions on cruelty toward animals made into Bill C-15B.

These bills to amend died on the Order Paper and were reintroduced in October 2002 as part of Bill C-10, which contained amendments relating to firearms.

In November 2002, the two portions were divided between bills C-10A and C-10B. The latter contained the provisions relating to animal cruelty. Bill C-10B died on the Order Paper in November 2003, and here it is back as Bill C-22.

[*English*]

In the year these amendments were before this chamber, there has been much unusual activity between this chamber and the other place. From December 2002 until May 2003, the Standing Senate Committee on Legal and Constitutional Affairs held comprehensive hearings into this legislation, hearing from many witnesses representing a range of interests.

In May 2003, this chamber approved four substantive changes to the legislation on the recommendation of our committee. The other place approved two of these amendments, making a modification to one of them. Honourable senators should know that these two amendments satisfied the last remaining concerns of animal industry organizations that had been opposing the legislation for several years.

The other place also did not agree with two amendments made by this chamber. The first one would have replaced the offence of killing an animal without lawful excuse with the offence of causing unnecessary death to an animal. The second would have created a defence for Aboriginal practices.

When the message from the other place returned to this chamber, honourable senators voted to send the message back to the committee. The Senate insisted on its outstanding amendments, and that message was communicated to the other place. The other place rejected the outstanding amendments a second time, sending a message back to this place. Honourable senators had just voted to refer the message back to the committee when Parliament prorogued last fall.

As honourable senators know, it is the practice of the other place that a bill may be reinstated within the first 21 days of the new session. Bill C-10B was reinstated in the House of Commons on March 1, 2004, as Bill C-22. The reinstatement procedure followed by the House of Commons does not allow any changes to be made to the form the bill was in prior to the prorogation of the last session. Consequently, Bill C-22 is identical to the old Bill C-10B, as agreed to by the other place, when the last session ended; and this includes the two Senate amendments that were accepted.

Honourable senators, I should like to talk for a moment about the support that exists for this legislation. The vast majority of Canadians overwhelmingly and loudly support Bill C-22 and the previous versions of the bill. Over the course of the many years that animal cruelty amendments have been before Parliament, Canadians have consistently voiced their strong support for legislative change in this area. Many organizations and sectors are also extremely supportive, including law enforcement, animal welfare organizations, provincial attorneys general and the veterinary associations.

Many of the groups that are actively involved in the protection of animals and the prosecution of offences have spoken to the urgent need to pass this legislation so they can carry out their mandates more effectively. The Canadian Veterinary Medical Association, the Canadian Federation of Humane Societies and the International Fund for Animal Welfare have all expressed their support for the legislation without any further amendment.

Many thousands of Canadians have put pen to paper on this issue to let the government know that this legislation is important to them.

[*Translation*]

The honourable senators might like to know that livestock groups, like hunting associations, animal research groups and the agricultural industry, were for a time very concerned about the impact of this bill. The two standing committees sought out the viewpoints and concerns of these stakeholders.

Thanks to the excellent work done by our committee, amendments were made to the bill that were not perhaps necessary from a legal standpoint but were intended to clarify matters of interest to Canadians without compromising protections to counter animal cruelty.

Two amendments moved by the Senate and agreed to by the other place responded to all the remaining concerns of these sectors of society and the industry in Canada.

Consequently, I want to state that livestock groups now support the bill in its current form.

[*English*]

Honourable senators, there is now an unprecedented level of agreement and support for Bill C-22 as it is before us today. The fact that both animal welfare and animal industry advocates are pressing for this legislation to be passed demonstrates convincingly that, in its current form, Bill C-22 represents an appropriate balance between protecting animals from unnecessary pain and ensuring that lawful and humane practices will not be subject to punishment. Those concerned about the welfare of animals, those whose livelihoods rely on animals and thousands of Canadians unaffiliated with these groups are all eager to see the bill pass without amendment.

• (2330)

Next are the amendments from the last session. Let me speak in more detail about the amendments that were made by this chamber in the last session. The first amendment was to limit the definition of "animal" by restricting it to "vertebrates other than human beings." The original definition in the legislation referred to vertebrates and also animals other than vertebrates that had the capacity to feel pain. It was intended to bring clarity into the law and also maximum respect of animals that are not invertebrates. Many animal industry groups worried about the reach of the law requested in this amendment. The amendment made by this chamber limited the definition to vertebrates and opted to prioritize certainty or flexibility in the law. If science evolves in the future, the law can be amended in the future. While this was not the choice that the government made when it drafted the legislation, the government did not oppose the amendment in the other place.

The second amendment made by this chamber went a long way toward bringing animal industry groups to support the legislation. This amendment made explicit reference to defences in subsection 429(2) of the Criminal Code, namely, the defences of legal justification, excuse and colour of right. This amendment replaced an express reference to subsection 8.3 of the Criminal Code that preserves all the common law defences. That section was added by the Justice and Human Rights Committee of the other place during its study of the former version of the bill. Although the government believed that the defences contained in subsection 429(2) were still available even without the amendment, it was understood that certain sectors of the population were concerned about them. In the House of Commons, the government did not object to the spirit of the amendment but did change the wording in order to eliminate an unconstitutional reverse onus. Again, the hard work of both this chamber and our committee was much appreciated by Canadians.

Honourable senators, last session two other amendments that this chamber passed need to be addressed by our committee. The last amendment that will again need to be studied by committee created a defence for Aboriginal persons engaged in traditional practices protected under section 35 of the Constitution.

One more issue caused some concern in the last session, namely, the issue of ritual slaughter for religious communities and the concern that something in this bill would put that practice at risk. This is not the case. Federal law explicitly authorizes ritual slaughter in federally regulated slaughterhouses. Section 77 of the Meat Inspection Regulations actually sets out how ritual slaughter is to be carried out. That regulation is a clear statement of government policy that ritual slaughter is lawful. That statement must be understood as carving out an area of lawful conduct in relation to the offence of cruelty. If the government authorizes ritual slaughter in one statute, it cannot logically prohibit it in another. If it wanted to do so, it would take very clear and precise language. Even so, ritual slaughter must cause immediate loss of consciousness. This prevents the animal from feeling any pain. It is a humane method of slaughter by law.

Ritual slaughter is, therefore, not cruel; it is exactly the opposite. It is fully in compliance with animal cruelty laws. There is nothing explicit in the current laws on animal cruelty and yet it is still lawful. Nothing in Bill C-22 turns ritual slaughter from legal to illegal activity or otherwise changes the legal standard that applies. There is no validity to this concern.

To the degree that the concern relates to animal rights groups or others starting private prosecutions against religious communities, honourable senators should know there are many safeguards against vexatious or unwarranted private prosecutions in the Criminal Code, including new ones that make prosecutions even more difficult than they were just a few years ago. In every private prosecution, there is an opportunity for a court to examine the case and decide whether it has merit, and the attorney general has the right to intervene and put a halt to it. All of this will happen before the accused person is ever summoned to court, before there is any cost or publicity. There is simply no reason to worry about private prosecutions getting out of control.

In conclusion, honourable senators, those are the main issues raised by this legislation in the previous session. I am sure that these issues will get a full airing when the bill is referred to committee. This legislation is as important today as it was in 1999, when first introduced in Parliament. In recent weeks, our newspapers have reported cases of dog poisoning in Toronto and a mutilated kitten in Montreal. It is time for Parliament to stand up and declare this kind of behaviour to be completely unacceptable. It is time for Parliament to demonstrate that we share the concern of Canadians that animals deserve to be protected from needless cruelty. This is what the overwhelming majority of the population is expecting of us.

Thank you, honourable senators, for your attention today.

Hon. Anne C. Cools: Honourable senators, could Senator Jaffer enlighten me on this business of this particular bill being reinstated? This bill, Bill C-10B, did not originate in the House of Commons, so I am having difficulty grasping how it could be reinstated. The honourable senator will recall that Bill C-10 was divided here in the Senate. At that time I had a number of concerns that the division was not executed properly and that it had created two new bills. The honourable senator will remember that the motions all referred to two new bills, complete with new bill numbers. Therefore, could Senator Jaffer answer my question?

In addition, could the honourable senator respond to a related question that, for me, was a thorny one? In response to the Senate dividing the bill into Bill C-10A and Bill C-10B, she will recall that the House of Commons, in its motion to accept the message on Bill C-10A, had a lot to say about the Senate breaching House of Commons privileges in respect of creating the two bills. Perhaps the honourable senator could explain this reinstatement to me and how this reinstatement can then just wash away the House of Commons motion criticizing the Senate for its actions.

Honourable senators, this is a troublesome question. If we live here, we live close to the Ottawa River. If someone is drowning in the Ottawa River, we can go and rescue him or her. However, if a person is in the St. Lawrence, we cannot rescue him or her. I fail to understand how the House of Commons can keep reinstating that which is not its and reinstating that which is not before it.

Honourable senators, I question this entire reinstatement process. As I said before, it is unconstitutional and improper. The major problem — and Mr. Martin has articulated it as the democratic deficit — is that all the constitutional rules and systems are being ignored. I, for one, want to know how this bill can be before us, claiming to be reinstated in these circumstances. It is a fraud.

Senator Jaffer: Honourable senators, the issues that the honourable senator has raised were eloquently addressed during our debate on this bill. As I pointed out today, the House has the option of reinstating a bill, which it has done, within 21 days of opening the session. In this case, it is the bill which is back before us. We will have an opportunity to debate all the issues that the senator has raised in committee and report the bill before third reading.

On motion of Senator Stratton, debate adjourned.

• (2340)

[*Translation*]

CUSTOMS TARIFF

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Pierre De Bané moved the second reading of Bill C-21, to amend the Customs Tariff.

He said: Honourable senators, I have the honour of presenting Bill C-21, amending the Customs Tariff, which will be examined in second reading today.

This bill would extend the general preferential tariff or GPT and the least developed country tariff or LDCT for 10 years, that is, until June 30, 2014. The GPT and LDCT are preferential tariff programs through which Canada provides assistance to developing countries and the least developed countries.

These two programs are part of the customs tariff and are subject to a sunset clause, such that they will expire on June 30, 2004. For decades, these programs have been unilaterally providing preferential tariffs on imports originating in beneficiary countries so as to stimulate exports and economic growth in these countries.

[*English*]

During the mid-1960s, as honourable senators will recall, there was a growing recognition that preferential tariff treatment for developing countries was a means of fostering growth and the well-being of poorer nations. Following a recommendation of the United Nations Conference on Trade and Development in 1968, most developed countries implemented unilateral non-discriminatory tariff preferences for goods from developing countries.

This generalized system of tariff preferences was intended to assist developing countries to increase their export earnings and to stimulate their economic growth. The system was introduced under the framework of the General Agreement on Tariffs and Trade, GATT, the predecessor to the World Trade Organization. Members of the GATT agreed that developed countries would be permitted to award more favourable treatment to products imported from developing countries than to similar products from developed countries. It was also agreed that the preferential tariff would be non-discriminatory and non-reciprocal.

It is under this program that Canada introduced the GPT on July 1, 1974, for an initial period of 10 years. The GPT has been renewed twice since then, in 1984 and 1994.

Canada subsequently introduced the LDCT in 1983 in the context of an international effort to provide even more generous preferential tariff treatment to goods from the world's least-developed countries. The LDCT has also been renewed since then.

As I indicated, both programs are now set to expire on June 30, 2004. The objective of the bill before the house is to continue these important tariff programs beyond that date for a further 10 years.

I would like now to take a moment to review some of the essential features of these programs.

[*Translation*]

Under the GPT, more than 180 countries and territories are entitled to zero or low tariffs on a large variety of products that are covered under the customs tariff.

The main goods not covered by the GPT are agricultural products that are subject to the supply management system, including eggs, dairy products, poultry, refined sugar and most textiles, clothing and footwear.

Three quarters of the goods covered by the GPT can be imported to Canada duty free. The other goods are subject to duties that are lower than the regular MFN rate. Like other programs put in place by other industrialized countries, the Canadian GPT is a unilateral program, which means that the Canadian government can make changes at any time to the various GPT elements.

It may be of interest to know that, in 2003, the primary beneficiary of the GPT was China, which provided 60 per cent of the imports covered by this tariff. That country was followed by South Korea, Thailand, Brazil and India.

As for the LDCT, it is granted to 48 of the poorest countries in the world, according to the UN definition, which is based on various criteria such as national income, health and education.

Since January 2003, the government has followed up on a commitment made in 2002 at the G8 summit in Kananaskis and all imports from LDCT countries are now duty free, with the exception of a few agricultural items such as dairy products, poultry and eggs.

[*English*]

Honourable senators, the reasons that justify the introduction of the GPT and the LDCT decades ago still remain. There are still many countries in the world with low per-capita income levels. We were reminded again of this fact in a recent report by the United Nations Commission on the Private Sector and Development, co-chaired by Prime Minister Paul Martin. The report highlighted that despite progress over the last 50 years, 4 billion people live today on less than U.S. $5 per day in the developing world. Of those, 1.2 billion people live on less than U.S. $1 per day. Hence, the promise that originally led to the establishment of preferential tariff programs — that they would encourage an increase in exports that stimulates economic growth and helps reduce poverty in the developing world — still holds today. While many studies have pointed out that preferential tariff programs have supported economic growth in many poorer countries, they still see preferential access to the markets of the developed world as an important instrument to help them improve their development prospects.

Therefore, extending the GPT and LDCT for another 10 years reaffirms the government's commitment to promoting the export capability and economic growth of developing and least-developed countries. Furthermore, improved market opportunities are themselves important to attract much needed investment in the developing world.

Continuing these two long-standing preferential tariff programs will send a positive message to beneficiary countries that Canada continues to see these programs as an important tool for economic growth in developing and least-developed countries.

As well, honourable senators, an extension would be consistent with Canada's international commitments to help stimulate economic growth and reduce poverty in the developing world. These commitments have been reiterated on many occasions by Canada in such forums as the G8 and the World Trade Organization. By extending these programs we will continue Canada's tradition of assisting the developing world. Moreover, the evidence gathered in many studies, as well as the example of certain countries and regions such as Southeast Asia, supports the principle that export expansion contributes to general economic growth.

• (2350)

Finally, by extending the GPD and LDCT, Canada will be joining other developed countries in their efforts to assist poorer nations. In this regard, it is important to remind ourselves that all major industrialized countries, without any exception, provide preferential access for the developing world, and some of them, including the United States, Japan, and members of the European Union, have recently extended their programs.

[*Translation*]

It is important to point out that the advantages associated with the GPT and the LDCT are not limited to developing countries and the least-developed countries. It is true that these two programs were initially designed as an economic measure for developing countries, but they also present advantages for many Canadians.

In 2003, Canadian imports subject to the GPT and LDCT were worth an estimated $9.7 billion. If these programs had not existed, Canadian importers and consumers would have had to pay additional customs duties of roughly $273 million. It is obvious that Canadian consumers benefit directly from these programs. Because customs duties applicable to goods from developing countries are lower, Canadians can purchase imported goods at competitive prices.

Canadian producers benefit from the reduced duties on the inputs they import from developing countries, which they use to produce goods in Canada. These reduced tariffs on inputs help increase productivity for these producers. Thus, these tariff programs contribute to the economic development of beneficiary countries and also present advantages for Canadians.

[*English*]

Before closing, I should like to quote from the eloquent speech made by the United Nations Secretary-General Kofi Annan before our Parliament, invited by the Right Honourable Prime Minister, on March 9. In making reference to the importance of the goals of the 2000 Millennium Declaration, a joint statement of our ambitions for humanity in the new century, he said:

> Reaching the millennium development goals will require a true global partnership in which all developed countries play their parts through increased and more effective official development aid, investment, advice, and policies that ensure a just global trading system.

He went on to add:

> ...we must make certain that poor countries have a chance at development and that they can benefit from globalization....
>
> Developing countries should be given the chance to trade away their poverty...

His comments reflect the underlying principles behind the GPT and LDCT programs, the extension of which is the focus of Bill C-21, introduced by our government. They also highlight the importance of encouraging economic growth in the developing world, including through expanded trade, as part of achieving coherence between trade and development policy, an approach that Canada fully supports.

Many of my colleagues in this house have been contributing to improve this two-way trade between Canada and many countries of the world. I shall not name names, but many colleagues have been very active in doing that. When countries trade together, a solid foundation for better relations between them is built.

Honourable senators, as I highlighted earlier in my remarks, the economies of many developing and least-developed countries still have to make great strides if their people are to attain acceptable income levels, as evidenced by the fact that one fifth of the world population lives on less than U.S. $1 a day. This bill constitutes one substantive measure Canada can take to assist the developing world in achieving the goals of poverty reduction. I strongly urge honourable senators to support the bill and reaffirm Canada's continued commitment to supporting economic growth in the developing world. As a member of the international community of nations, Canada must continue to take an active role in advancing international economic developing efforts. This bill is of direct benefit to the people of the developing world, whose livelihoods are partly dependent on the performance of the often limited export sectors of their economies.

In case any of my honourable colleagues still have questions about extending the GPT and the LDCT, let me simply say this: Both of these programs have been in place for decades as part of Canada's commitment to providing more open markets for and reducing poverty in the world's poor countries, a commitment the government reiterated on many occasions in international forums such as the G8, the United Nations and the World Trade Organizations. I am very proud that, in the other House, all parties supported Bill C-21.

Let me remind honourable senators that Canada stands with all other major industrialized nations, including the United States, Japan and members of the European Union, in supporting the developing world through preferential tariff programs. As I indicated earlier, the advantages to extending the GPT and LDCT for an additional 10 years are many.

First, Canada will continue a long-standing international practice of providing preferential tariff treatment to goods from the world's poorer nations in order to support their economic growth and help reduce poverty.

Second, Canada's continued program for a fixed period of 10 years will provide certainty and predictability to traders who use them in Canada and in the developing and least-developed countries.

Third, continuing these two programs will complement Canada's foreign aid policies by continuing to provide a balanced approach where it is recognized that sustainable poverty reduction requires measures such as preferential market access through tariff programs such as the GPT and LDCT to stimulate economic growth.

Finally, while these programs were mostly conceived as economic assistance measures to developing and least-developed countries, they also benefit domestic importers of inputs and consumers of finished products by providing them with goods that are subject to lower rates of duty.

Quite simply, a 10-year extension of the GPT and LDCT would be consistent with past practice, provide a predictable and beneficial business environment to users of the programs and reaffirm a long-term commitment by the government to international development.

I urge all honourable senators to support this bill in order to allow for the continuation of important Canadian measures that support economic growth and poverty reduction in the developing world. Canada will continue to be an inspiration for the developed countries to pursue those measures that not only will improve the living conditions of the poorer countries but also will enhance world peace.

On motion of Senator Kinsella, debate adjourned.

● (2400)

The Hon. the Speaker: Honourable senators, it being twelve o'clock midnight, pursuant to rule 6(1), I declare that the motion to adjourn the Senate has been deemed to have been moved and adopted.

The Senate adjourned until tomorrow at 2 p.m.

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