



CANADA

# Debates of the Senate

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2nd SESSION

•

35th PARLIAMENT

•

VOLUME 135

•

NUMBER 27

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OFFICIAL REPORT  
(HANSARD)

**Thursday, June 6, 1996**

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THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER

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(Daily index of proceedings appears at back of this issue.)

## OFFICIAL REPORT

### CORRECTION

**Hon. Anne C. Cools:** Honourable senators, I should like to make a correction to the French version of the *Debates of the Senate* at page 550. I do this on behalf of Senator Losier-Cool. My French is not very good, but at page 550 under “l’Ordre du jour” the motion which was moved by Senator Losier-Cool is recorded as having been moved by me. Senator Losier-Cool has asked me to make this correction. In other words, the mover of third reading for Bill C-33 was Senator Losier-Cool, not Senator Anne Cools.

The English *Debates of the Senate* are quite in order and need no correction.

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*Debates:* Victoria Building, Room 407, Tel: 996-0397

Published under the authority of the Senate by the Queen’s Printer for Canada

Available from Canada Communication Group — Publishing, Public Works and Government Services Canada, Ottawa K1A 0S9,  
at \$1.75 per copy or \$158 per year.

## THE SENATE

Thursday, June 6, 1996

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### CANADA REMEMBERS

##### FIFTY-SECOND ANNIVERSARY OF D-DAY

**Hon. Joyce Fairbairn (Leader of the Government):** Honourable senators, today I am sure all of us in this chamber would want to recognize one of the historic moments in the history of our country, and perhaps in the history of the world: June 6, 1944 — D-day.

Today we reflect not only on what was won 52 years ago but also on what was lost, and what must be remembered. By the time Canadians in their own country learned of the D-day landings, more than 359 of their family, friends, and neighbours lay dead on the beaches and in the fields of Normandy. More than 700 lay wounded. However, as we read our history, the more than 15,000 Canadian troops who landed on Juno Beach on this day in 1944 accomplished what they had set out to do.

It is truly impossible to pay adequate tribute to the courage and the patriotism of those young Canadians who fought for the values of freedom and tolerance which we hold so dear today; the same values which have kept the name of Canada synonymous with peacekeeping around the world.

Our strongest tribute to the memory of those fallen Canadian heroes, as I said two years ago, must be the continuing education of young Canadians about their history, the history of our country and its defenders, and how young Canadians fought to keep Canada free, and died in their efforts. Our young Canadians today must know and understand the strength of such a commitment.

Two years ago, on this anniversary, and in a visit to those beaches, Prime Minister Chrétien spoke of how a young nation had come of age through the events of D-day, and how the legacy of that day must be a Canada united from sea to sea to sea.

It is only through the knowledge and the understanding of the efforts of that day, the wars that have made our country grow as we have participated in the harsh realities of the world, and the sacrifices of the past that we can ensure the protection of a free, united, and independent Canada.

**Hon. Orville H. Phillips:** Honourable senators, I should like to join in the remarks of the Leader of the Government in recalling this very special occasion in Canadian history.

While we refer to it as a "very special occasion," we must also recall it as a very tragic one, and hope that never again will Canada as a nation be required to go through such an experience.

• (1410)

On days such as this, many people recall not only their loved ones lost in the invasion of Europe but friends as well. I think of members from my Boy Scout troop who did not make it ashore that day; I think of the airmen I trained who were shot down that day. It is unfortunate that, as time goes by, we tend to forget our obligation to these people; perhaps we tend to forget them.

I recall attending a ceremony in Holland marking the 25th anniversary of the end of the war. At a ceremony in the Great Hall of the Knights, a poet laureate of Holland read a poem. I will always recall this line from it. She said:

Each time I recall you, your face grows dimmer.

Honourable senators, this is something we must avoid; we must not forget the occasion, and we must not forget those who participated in it. We must not let their faces or their memories grow dim.

I hope that someday we will have a bit more of our history devoted to areas such as this, and that it will be accurate; not something gleaned from a film prepared for the National Film Board, or something of that nature. That history should reflect the true suffering caused on such occasions.

[Translation]

### ROUTINE PROCEEDINGS

#### TRANSPORT AND COMMUNICATIONS

##### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTINGS OF SENATE

**Hon. Lise Bacon:** Honourable senators, I give notice that at the next sitting of the Senate, I shall move:

That the Standing Senate Committee on Transport and Communications have power to sit at 3:30 p.m. on Tuesdays and Wednesdays for the duration of its study of Bill C-20, An Act respecting the commercialization of civil air navigation services, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

[English]

### THE ESTIMATES, 1995-96

NOTICE OF MOTION TO REFER TO NATIONAL FINANCE  
COMMITTEE BUDGET MATERIAL RECEIVED  
DURING PREVIOUS SESSION

**Hon. David Tkachuk:** Honourable senators, I give notice that on Tuesday, June 11, 1996, I will move:

That the papers and evidence received and taken by the Standing Senate Committee on National Finance during its review of the Main Estimates 1995-96, in the First Session of the Thirty-fifth Parliament, be referred to the Committee.

### SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

COMMITTEE AUTHORIZED TO MEET  
DURING SITTING OF THE SENATE

**Hon. Mabel M. DeWare,** with leave of the Senate and notwithstanding rule 58(1)(a), moved:

That the Standing Senate Committee on Social Affairs, Science and Technology have power to sit at 8:00 p.m., June 10, 1996, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

**Hon. Senators:** Agreed.

Motion agreed to.

### QUESTION PERIOD

#### ROYAL CANADIAN MINT

CONTRACT GRANTED TO U.S. COMPANY  
TO MINT CANADIAN COIN—GOVERNMENT POSITION

**Hon. Gerald J. Comeau:** Honourable senators, my question is for the Leader of the Government in the Senate. I was shocked to learn last night on the news program *The National* that the Liberal government had awarded the minting of the Canadian penny to a U.S. firm, a contract worth some \$10 million. I hate to raise this matter, but I am sure a number of questions will be asked of me when I return home this weekend. I would like the minister to offer some explanation.

Does the minister think it appropriate for a foreign country to be minting our penny? Second, what will she do in regard to this outrageous contract?

**Hon. Joyce Fairbairn (Leader of the Government):** Honourable senators, the first thing I will do is ask my colleagues

about the background of this decision and the nature of it. I will be quite frank with my honourable friend — I do not know the details of this matter, but I will certainly find out.

**Senator Comeau:** Honourable senators, while the minister is asking questions of her colleagues, if this contract is, in fact, in place, I wish to remind the minister to remind her colleagues, in turn, that the previous government was often accused of cozying up to the Americans. If this contract is indeed in place, it would stretch the concept of the “Three Amigos” to such lengths that the previous government’s cozying up would not be comparable at all.

Honourable senators, where will this end? We have handed over the Mountie image to the Mickey Mouse Club, and now our beloved penny is to be minted by an American company. What is next — the Canadian flag?

### FISHERIES AND OCEANS

MALPEQUE, P.E.I.—AVAILABILITY OF EMERGENCY FUNDS  
TO AID LOBSTER FISHERMEN—REQUEST FOR ANSWER

**Hon. M. Lorne Bonnell:** Honourable senators, about two weeks ago, Senator Phillips and I asked what the federal government intended to do about Malpeque harbour and its sand dunes. Does the Leader of the Government in the Senate have any information that would relieve the situation for the fishermen on Prince Edward Island?

**Hon. Joyce Fairbairn (Leader of the Government):** Honourable senators, I have been advised by my colleagues in the House that the Department of Fisheries and Oceans has approved the funding necessary to carry out the dredging of Darnley Basin. This is planned to begin immediately after the issue of the necessary permits. Once the dredging is completed, the fishers in the area will be provided with a safe access in and out of their harbour during the remaining weeks of the season.

### CANADA STUDENT LOANS PROGRAM

CUTS IN FUNDING TO QUEBEC STUDENTS STUDYING  
OUTSIDE OF PROVINCE—GOVERNMENT POSITION

**Hon. M. Lorne Bonnell:** Honourable senators, I have another question for the Leader of the Government in the Senate. Beginning in the fall of 1997, the Government of Quebec has decided that students in that province will not be eligible for student loans if they wish to study in the English language outside of that province. That is, with only a few exceptions, the Province of Quebec will offer assistance to students in financial need who study in Quebec, or study in French outside of Quebec.

This policy seems to violate the principle of the federal Canada Student Loans Program. While the Province of Quebec opted out of the initiative over 30 years ago, Quebec has received — and still receives — financial compensation from the federal government to operate its own student assistance program.

My question for the Leader of the Government on behalf of the students of Quebec and of Canada is this: What is the Government of Canada doing to ensure mobility rights for the students of Quebec? What will it do to ensure that these students receive the federal dollars that are intended to allow them to attend the Canadian universities or colleges of their choice?

• (1420)

**Hon. Joyce Fairbairn (Leader of the Government):** Honourable senators, my honourable friend is correct in stating that the Province of Quebec opted out of the student loans program in 1964. However, it receives compensation from the Government of Canada to operate its own student program. Under the Canada Student Loans Program, such compensation for a province that chooses to opt out is provided if that plan has substantially the same effect as the national plan.

The Government of Canada encourages and promotes student mobility, whether it be in Quebec or any other part of Canada. The government is currently looking at this situation and has sought advice from the Department of Justice.

## CANADA-CHINA RELATIONS

### HONG KONG—1997 TRANSFER OF GOVERNMENT TO CHINA— HUMAN RIGHTS CONCERNS

**Hon. Consiglio Di Nino:** Honourable senators, we have recently read that in preparation for the upcoming Chinese take-over of Hong Kong, Canada has a contingency plan to evacuate 150,000 to 250,000 inhabitants from that city should “civil unrest ensue.”

Will the Leader of the Government in the Senate confirm that by developing this plan the government expects China to continue its approach of oppressing the rights of individuals, Hong Kong being no exception?

**Hon. Joyce Fairbairn (Leader of the Government):** Honourable senators, I will have to seek some background on the details of any Canadian plans involving Hong Kong. However, it is the view of the Canadian government that this transition should take place as peacefully and as democratically as possible. I would not make those kind of assumptions, nor would the government wish to make the kind of assumptions that my honourable friend has mentioned.

**Senator Di Nino:** Honourable senators, while the Leader of the Government is getting that information, would she provide this chamber with information on how the Government of Canada intends to treat immigrants and refugees from Hong Kong after the take-over? Will they continue to be recipients of visa-free entry into Canada?

**Senator Fairbairn:** Honourable senators, I will seek that information for my honourable friend.

## FOREIGN AFFAIRS

### INTERNATIONAL CENTRE FOR HUMAN RIGHTS AND DEMOCRATIC DEVELOPMENT—REPLACEMENT OF DIRECTOR—MAINTENANCE OF BUDGET— GOVERNMENT POSITION

**Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition):** Honourable senators, would the Leader of the Government in the Senate inquire, if she does not know the answer already, whether or not the government is complying with the statute establishing the International Centre for Human Rights and Democratic Development, particularly with reference to the procedure to be followed in filling the position of director of that centre?

The minister will know that the current director, the Honourable Ed Broadbent, is stepping down, and a replacement will be needed. The statute contains a provision to the effect that the board of directors of the centre should be consulted before an appointment is made.

**Hon. Joyce Fairbairn (Leader of the Government):** Honourable senators, I would be pleased to look into that matter for my honourable friend, and to get any additional information on timing that I can.

**Senator Kinsella:** Honourable senators, by way of a supplementary question, in light of the news release issued today by the Canadian International Development Agency to the effect that that agency is contributing \$11.5 million to an environment project in China, could the minister tell me whether or not the budget that is established for the International Centre for Human Rights and Democratic Development, which comes out of the funds of CIDA, will be at the same level for this year as it was last year, and that it will not be reduced by CIDA contributing \$11.5 million to a project in China, whose human rights record, as our colleague the Honourable Senator Di Nino keeps reminding us, is at a lower level than we would like to see it?

**Senator Fairbairn:** Honourable senators, I will pursue my honourable friend's questions.

## ORDERS OF THE DAY

### NEWFOUNDLAND

#### CHANGES TO SCHOOL SYSTEM—AMENDMENT TO CONSTITUTION—MOTION IN AMENDMENT— DEBATE ADJOURNED

**Hon. Joyce Fairbairn (Leader of the Government),** pursuant to notice of Tuesday, June 4, 1996, moved:

Whereas section 43 of the *Constitution Act, 1982* provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies;

Now therefore the Senate resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by His Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

#### SCHEDULE

#### AMENDMENT TO THE CONSTITUTION OF CANADA

I. Term 17 of the Terms of Union of Newfoundland with Canada set out in the Schedule to the Newfoundland Act is repealed and the following substituted therefor:

“17. In lieu of section ninety-three of the Constitution Act 1867, the following shall apply in respect of the Province of Newfoundland:

In and for the Province of Newfoundland, the Legislature shall have exclusive authority to make laws in relation to education but

(a) except as provided in paragraphs (b) and (c), schools established, maintained and operated with public funds shall be denominational schools, and any class of persons having rights under this Term as it read on January 1, 1995 shall continue to have the right to provide for religious education, activities and observances for the children of that class in those schools, and the group of classes that formed one integrated school system by agreement in 1969 may exercise the same rights under this Term as a single class of persons;

(b) subject to provincial legislation that is uniformly applicable to all schools specifying conditions for the establishment or continued operation of schools,

(i) any class of persons referred to in paragraph (a) shall have the right to have a publicly funded denominational school established, maintained and operated especially for that class, and

(ii) the Legislature may approve the establishment, maintenance and operation of a publicly funded school, whether denominational or non-denominational;

(c) where a school is established, maintained and operated pursuant to subparagraph (b)(i), the class of persons referred to in that subparagraph shall continue to have the right to provide for religious education, activities and observances and to direct the teaching of aspects of curriculum affecting religious beliefs, student admission policy and the assignment and dismissal of teachers in that school;

(d) all schools referred to in paragraphs (a) and (b) shall receive their share of public funds in accordance with scales determined on a non-discriminatory basis from time to time by the Legislature; and

(e) if the classes of persons having rights under this Term so desire, they shall have the right to elect in total not less

than two thirds of the members of a school board, and any class so desiring shall have the right to elect the portion of that total that is proportionate to the population of that class in the area under the board's jurisdiction.”

#### Citation

2. This Amendment may be cited as the Constitution Amendment, year of proclamation (Newfoundland Act).

She said: Honourable senators, today we begin to consider a piece of business which does not happen very often, namely, a request by a province for parliamentary approval of an amendment to alter one of the terms whereby that province entered into Confederation.

On October 31, 1995, the Newfoundland and Labrador House of Assembly adopted a resolution to amend Term 17 of the Terms of Union of Newfoundland and Labrador with Canada. The assembly then passed a unanimous resolution on May 23 of this year respectfully asking the members of the House of Commons and the Senate to consider the proposed amendment to Term 17 at their earliest convenience and to decide the issue before Parliament rises for the summer.

This resolution, honourable colleagues, has been adopted by the House of Commons in a free vote of 170 in favour and 46 opposed, and it has come to us for our consideration. The Government of Newfoundland and Labrador has asked for this amendment in order to reform its educational system. The Prime Minister of Canada, the Right Honourable Jean Chrétien, assured former premier Clyde Wells in a letter in January of this year that the federal government “intends to proceed with the amendment resolution” and debate the matter before the summer recess, as I have mentioned on a number of occasions in the Senate in answer to questions from friends opposite.

Honourable senators, this is a bilateral procedure between two governments only. We have been requested by the Government of Newfoundland and Labrador to adopt a resolution under the Constitution Act, 1982 which, to use the language of the law, provides that:

An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces...

may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies.

• (1430)

This, honourable senators, is the same provision under which the Senate has considered and approved three other bilateral amendments in recent years — one from Newfoundland and Labrador regarding the same Term 17 in 1987 affecting the Pentecostal Assemblies, one from New Brunswick regarding its official language status in 1993, and one from Prince Edward Island paving the constitutional way for the fixed-link bridge in 1994.

This amendment before us has received broad-based approval that crosses party lines in both the Newfoundland and Labrador House of Assembly and in our other House of Parliament. Popular support was expressed as well in a referendum in Newfoundland and Labrador in 1995 wherein 55 per cent of the people voted in favour and 45 per cent voted against.

Many concerns have been raised, honourable senators, not only in this Parliament but across the country, which go well beyond the issue of education. Fears have been expressed about the possible curtailment of both religious and minority rights, and I am sure that these concerns will be addressed by others here in this house with various and differing points of view.

This issue has been debated for generations. Since the report of the Royal Commission on Education, "Our Children, Our Future" in 1992, the government of Newfoundland and Labrador has been actively attempting to implement recommendations. The heart of the matter is the proposed changes from the protection provided in the existing Term 17 which says:

...the Legislature —

— with reference to the legislature of Newfoundland and Labrador —

— will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational schools...that any class or classes of persons have by law in Newfoundland at the date of Union, and out of public funds of the Province of Newfoundland, provided for education,

(a) all such schools shall receive their share of such funds in accordance with scales determined on a non-discriminatory basis from time to time by the Legislature for all schools then being conducted under the authority of the Legislature;

For the sake of brevity, honourable senators, I will not read the existing Term 17 in its entirety, but simply focus on the most relevant aspects to be considered.

The denominational system in Newfoundland and Labrador had its start in the first quarter of the eighteenth century and became the foundation of the educational system in that province. The churches have established and operated the schools since that time. Basically, each denomination looked after the educational needs of its own children. As a consequence, the denominational system evolved over time and eventually was enshrined in many pieces of legislation, with each denomination being given formal rights to establish and maintain schools.

In 1949, when Newfoundland became a Canadian province, it was necessary to provide for the jurisdiction of the province over education as had been done for each of the other nine provinces in a manner appropriate to their circumstances. The unique

circumstances of Newfoundland and Labrador resulted in Term 17, which applies to Newfoundland in lieu of section 93, which covered the other provinces.

Term 17 guarantees rights to several different minority groups in Newfoundland and Labrador which, together, comprise over 95 per cent of the province's population. Therefore, unlike the other provinces, there is no majority denomination in Newfoundland and Labrador. This is an important factor which distinguishes that province from the other provinces, and is taken into account when considering the proposed amendment and resolution which we have before us.

The situation is quite unlike that existing in the other provinces, given that there is no majority denomination in Newfoundland and Labrador. It is the only province in Canada in which there are only denominational schools and no public school system.

As the Minister of Justice stated last Friday while introducing debate in the other place:

Precedents require similar facts or similar principles and it would be difficult to find a future circumstance in a different province where the same principles and circumstances would prevail.

Moreover, both Houses of Parliament have the right and the responsibility to determine independently, and on its own merits, if any proposed amendment before them should go forward.

Should we approve this resolution, we will not be creating a rigid rule which will bind us in all future cases to do the same. As has occurred in the past, senators have made up their minds on the facts and on the merits of each individual case.

Concerns have been expressed that approval by this Parliament could create a precedent in dealing with the results of a future Quebec referendum. I would suggest to colleagues that our actions in dealing with a request from Newfoundland and Labrador to help modernize its education system will not set parameters for results of a referendum on the breakup of this country.

Concerns have also been expressed about the issue of religious rights. Term 17 constitutionally entrenches denominational rights for Anglicans, Presbyterians, Roman Catholics, Salvation Army, Seventh Day Adventists, the United Church and the Pentecostal Assemblies. Since 1969, the Anglican, Presbyterians, Salvation Army and United Church religious denominations have acted jointly through a Document of Integration. These rights are generally acknowledged to include the right to operate separate schools and school boards for each denomination; funding for school construction distributed according to denominational population; denominational hiring of teachers, and non-discriminatory funding for operating costs. The provincial legislature cannot pass education legislation which diminishes the rights held by the churches under Term 17.

Since 1949, the government and the churches have updated the school system from time to time in a consensual manner. At this time, Newfoundland and Labrador schools operate with government funding and standards but are governed by councils representing the province's key churches.

It was the churches who were responsible for educational beginnings in Newfoundland and Labrador, with teaching being provided for many years by the clergy and by other philanthropic agencies under the auspices of the churches. When the government became involved in education, it was both natural and beneficial that it should continue to rely on the churches to provide education in the province while assisting with financial and administrative assistance in a cooperative partnership, in the best interests of the people of Newfoundland and Labrador.

The time has now come, which is the reason that this resolution is now before the Senate, when the provincial government of Newfoundland and Labrador has concluded that the current system is no longer viable in terms of its educational and economic obligations to the citizens of that province. There have been extensive discussions over the last three years or so between the government and the various religious denominations. However, to date there has not been an agreement.

Accordingly, in order to proceed with reforms with a view to reducing the cost of the education system, including the cost of new schools, of school improvements, of busing, of overlap and duplication, and also of upgrading the quality of the education services, the legislative assembly of Newfoundland and Labrador has passed this resolution.

• (1440)

The amendment would substitute a new version for the existing Term 17. Like its predecessor, the new version provides for exclusive provincial jurisdiction over education, subject to the limits it establishes.

One overall fundamental change in the new Term 17 is to define "denominational rights" within the term itself rather than by reference to unspecified existing rights or privileges which dictated the educational structure as it has existed since 1949.

The proposed amendment provides the basis for a school system of publicly funded schools where all denominational classes that now have rights under Term 17 shall continue to have the right to provide for religious education, activities and observances for the children of that class. However, these will be interdenominational schools as opposed to unidenominational schools. This is the key change, and it is reflected in the following example.

As things stand now, if three neighbouring children on a street belong to the United Church, the Roman Catholic Church and the Pentecostal Church, since each belongs to a denomination whose members have rights under the current Term 17, they would each attend a different denominational school for children of their particular religion, subject to the possible existence of joint schools in some areas. Under the new system, where numbers

warrant, they would all attend the same neighbourhood school and be provided with religious education, activities and observances appropriate for each. They would do so within the same school.

Under the current system, the different schools are controlled, for the most part, by the church to which the class of children being served belongs. Under the new Term 17, any class of persons having rights under this term, as it read on January 1, 1995, shall continue to have the right to provide for religious education, activities and observances for the children of that class in those schools.

For example, the Anglican Church can provide for religious education, activities and observances of the Anglican children in the interdenominational neighbourhood school, and the same rights exist for children belonging to other denominations. However, none of these classes would have the right to unilaterally control the school to the extent that they now control their own unidenominational schools.

The amendment also preserves the right to publicly funded unidenominational schools for those who have rights under the current Term 17, where numbers warrant, but provided always that the same criteria apply to all schools.

The legislature would be empowered to approve the establishment, the maintenance and the operation of a publicly funded school whether it was denominational or non-denominational. It could permit, for example, the creation of a non-denominational school for the deaf or for aboriginal people.

In unidenominational schools, each class shall have the right to direct the teaching of aspects of curriculum affecting religious beliefs, student admission policy, and the assignment and dismissal of teachers in that school. The amendment also provides there will be no discrimination between different kinds of schools in determining their share of public funding.

It gives the denominational classes the right to elect, in total, not less than two-thirds of the members of a school board. This total would be divided among the classes in accordance with the proportion of the population constituted by each class in the area under the board's jurisdiction.

Processes whereby denominational rights would be exercised within the board structure would be established by legislation. Therefore, the denominations would still have a right to participate in school management.

Thus far, I have concentrated on what the proposed amendment is designed to do. However, it is also important to note some of the things that it does not do.

The government is convinced the amendment does not affect official language educational minority rights in any way. These are constitutionally protected by section 23 of the Charter, and nothing in this amendment is believed to diminish that protection.



**Hon. Lowell Murray:** Various of those rights are subject to bilateral amendments.

**Senator Fairbairn:** The government is convinced it does not affect aboriginal rights in any way. These are constitutionally protected by sections 25 and 35 of the Constitution Act, 1982, and nothing in this amendment, it is believed, will diminish that protection.

The amendment does not do away with religious education in the classroom; nor does it single out any religious minority for discriminatory treatment.

The adoption of the resolution before us will enable Newfoundland and Labrador to change and to modernize its school system to meet the demands of current times, while preserving the moral teachings of the church as a fundamental feature of the school system.

Honourable senators, Newfoundland is rich in many ways, as everyone in this chamber knows. For example, it is rich in history and culture. However, in other ways, economic ways, it is the poorest of our Canadian provinces. For generations, the people of Newfoundland and Labrador have relied on the fishery for work and to provide for their families and their communities.

**Senator Doody:** They also trusted the federal government to look after that.

**Senator Fairbairn:** Everyone in this house knows the sad and critical state of the fisheries in Newfoundland and Labrador. Naturally, all of us hope for future restoration. However, clearly, alternatives must be developed for the citizens of that province today and tomorrow. This means there will be a greater reliance, not just on basic education, but on new skills, learning and adaptability, which are demanded by our rapidly changing marketplace and workplace.

The children of Newfoundland and Labrador must have the same opportunities that are available in the rest of Canada in order to help them attain the best possible opportunities. That imperative lies at the heart of the resolution.

Honourable senators, the government takes its responsibility in the constitutional amending process very seriously. In this case, it has carefully considered the proposed amendment and concluded that, on its merits, it deserves to be honoured.

A number of senators on both sides have expressed the view that this proposed resolution should be referred to a committee. On behalf of the government, I would support a motion in amendment to refer this resolution to our Standing Senate Committee on Legal and Constitutional Affairs so that those with an interest in this matter will have an opportunity to express their views before Parliament. I would support such a motion, honourable senators, because senators, as well, will then be in a better position to judge the merits of this resolution when it is put to a final vote.

I believe that the Term 17 amendment merits support in this chamber. I am confident that this will be borne out by any hearings that might be held.

I thank honourable senators for their attention.

• (1450)

**Hon. C. William Doody:** Honourable senators, I have listened with interest and attention to the comments of my friend the Leader of the Government in the Senate in this matter. I respect her opinions and her views in most cases.

Right off the top of my head, I must take exception to the fact that she is asking that the children of Newfoundland be given the same opportunities in education that the children of the rest of Canada have. I find that offensive. I think it is uncalled for. The children of Newfoundland have been treated well by the educational system that they have experienced over the past years. There are people in this chamber and in the other chamber, people all across this country, who have graduated through the ranks of the educational system in Newfoundland and who have done this country proud since 1949 when Newfoundland became a part of this country.

I do not think it is necessary for someone from some other part of this country to pontificate about the quality of the education of the children in Newfoundland. I do not hear the parents complaining about the quality of the education of the children in Newfoundland to the school boards with which I have been speaking over the past months. They seem not only quite satisfied with it but quite appalled by the steps that appear to have been taken unilaterally by the majority of the electorate in Newfoundland and which have been rubber-stamped in the other place under the auspices of the Government of Canada and now brought to this place.

I have spoken with ex-premier Wells of Newfoundland and more recently with Premier Tobin and his advisors. I have listened to their explanations and their reasoning on this matter. I have read with attention and listened with amazement to the speeches in the other place. The ignorance of some commentators on the conditions in my province is absolutely appalling. People from other provinces have the same experience when people who know everything start speaking about things about which they know nothing.

No one speech or combination of speeches in the other place, outside the other place, or here today has come close to putting to rest the basic, central, core issue that is at stake here, and that is minority rights — minority rights which have been enshrined in the Constitution of Canada by Term 17 of the Terms of Union of Newfoundland and Labrador.

This article was not agreed upon by accident or by oversight. Classes of persons were recognized at the time Newfoundland joined Canada. My honourable friend has listed them. That was not an exclusive article. It was open to other classes of people who wished to participate afterwards, as was demonstrated in 1987 when the Pentecostal Assemblies of Newfoundland asked to be included as a class of persons with particular rights

recognized by the Constitution of Canada. They had, with the blessing of the provincial legislature, been running their own schools since approximately 1954. In 1987, they petitioned the assembly in Newfoundland to recognize them as a distinctive class, and they were so recognized. Subsequently, this request came to the Parliament of Canada, was endorsed by the other place, and came here.

I sat in my honourable friend's place at that time and introduced with some pride the request of the Pentecostal Assemblies to be recognized as a special class with the same distinct qualities of the Anglicans, the United Church and the Salvation Army. My friend and colleague from Newfoundland, Senator Lewis, speaking from this side, endorsed it immediately, and it was passed unanimously. Now we have decided that these rights that the Pentecostal people had in 1987 are to be no more. They will be taken away by a simple act of the majority of the people in Newfoundland and endorsed by the Parliament of Canada.

This right that was so important in 1949 and endorsed in 1987 is not something that is frivolous or something that is capricious or something that is to be understated. It was a very important part of the discussions leading to Confederation at that time, and it is a very important part of the structure of the fabric of the province of Newfoundland. It is an important right for all the religious minorities. As my honourable friend has pointed out, all the religions in Newfoundland are minorities. There is no majority. Each of them felt and still feels that they have a right to run their own schools in their own way.

The people of Newfoundland and Labrador feel they have the right to have their children educated in schools that reflect the virtues, ethics, values, and culture with which they are comfortable. This minority right, agreed to by the representatives of the people of Canada and by the representatives of the people of Newfoundland, was placed in the Constitution of Canada so that it would be safe from the whims and vagaries of legislators.

Now, by a process to which I will refer shortly, that right is to be taken away from two minorities: Roman Catholics, comprising 37 per cent of the population, and the Pentecostal Assembly adherents who represent 7 per cent of the population. These people have vigorously and loudly objected to this, and who can blame them? There have been no public hearings on this, not in Newfoundland, and not in the House of Commons. With a shamefully short debate in that place, it has been sent up here for prompt and, I would assume, faithful adherence to the government's wishes. These people in Newfoundland, these minorities, are about to lose their rights by virtue of a vote of the majority.

I remember Clifford Lincoln saying not too long ago in the legislature of the province of Quebec that, "rights are rights are rights."

Some honourable senators and others have stated that the Constitution is not a block of granite or a slab of steel that cannot

be changed from time to time as conditions change and as the world evolves or as situations change. They are, of course, absolutely correct. No one argues with that. However, central to this is the consent of the minorities affected. If this referendum in Newfoundland had been held among those classes of people affected, then that would be a different situation completely. If the various minorities in Newfoundland had said, "Yes, we agree to abolish Term 17 and exchange it for a new Term 17," that would be an entirely different situation, and I would be the first one on my feet defending it. As it is, however, I think I am the first one on my feet objecting.

At least two of these minority groups whose rights will have been taken away have objected strenuously to this course of events. In fact, as can be seen in any record of the events, the districts of the province of Newfoundland which are predominantly Roman Catholic or predominantly Pentecostal voted "no" in the referendum. That does not matter — the majority voted "yes", and the rights of the minorities are submerged. The argument has been made that 95 per cent of the people of Newfoundland were represented in the vote, and that is absolutely correct. However, if you run minority rights on that principle, there are no minority rights. They are submerged by the fact that the majority decides what they want to do.

Honourable senators, I will refer to the referendum process a little later, but first let me emphasize how important it is to everyone involved in this to hear the honourable Leader of the Government say that public hearings will be held on this in a committee of this house. This is the last resort the minorities in Newfoundland have on this situation. If the Senate has a function, this surely must be it.

These hearings must be held, not only here in this place, for the sake of those "interested stakeholders," I think is the current phrase used across the country, but also in the province of Newfoundland, or at least in St. John's. I would not be presumptuous enough to say elsewhere, although I would like to see them held in other major centres, but certainly in St. John's. These hearings must be televised. The people in Newfoundland and the minorities in the rest of this country must see and hear for themselves how this process works. If there is to be any justice in this country and if the minorities are to see that there is justice in this country, then a public display of the Senate's work in this regard must be held. Open hearings, as wide as possible and publicly televised, must be seen in our country.

• (1500)

Honourable senators, the Standing Senate Committee on Legal and Constitutional Affairs is the obvious vehicle for this, and I am delighted to see that my honourable friend opposite agrees. If there ever was a legal or constitutional affair to be considered, this is it. If a precedent is to be established in this country in which the legislature votes to take a right away from a minority, then certainly the Standing Senate Committee on Legal and Constitutional Affairs should be the one charged with the responsibility for looking into it.

Honourable senators, I wish to point out the concern that this issue has raised among the Roman Catholic community and among the Pentecostal community. I worry more about the Pentecostal community than I do about the Roman Catholic community. The Roman Catholics have some clout at the ballot box. At least, if this abomination goes through, when the time comes for an accounting, the "micks" in Newfoundland and the rest of this country can let the public know where they stand. The Pentecostals, who represent 7 per cent of the population of Newfoundland, and I know not what percentage of the population of this country, will have little or no recourse at all.

It is important, I think, that the record show how the hierarchy of the Roman Catholic Church feels about this issue. Cardinal Carter, who is probably one of the most respected members of any denomination of our country, wrote to the Prime Minister on May 21. He expressed his concern in the first three paragraphs of his letter. However, in the fourth paragraph, he writes:

The Constitution of Canada recognizes and protects certain minority rights such as the language of debate in Parliament and in the Courts of Canada, Quebec, Manitoba and New Brunswick. There is also protection for minority language education rights, denominational education rights and aboriginal rights. Even the commitment in the Constitution to the principle of equalization payments from richer provinces to poorer provinces is a form of constitutional protection for minorities.

The reason why minority rights are protected in constitutions is so that they cannot easily be removed by majorities, who can sometimes behave in ways that are profoundly undemocratic. Would French-language rights survive outside of Quebec if they were subject to a referendum? Consider the debate over bilingual road signs in Ontario in the past. Would English-language rights in Quebec survive? What about aboriginal rights? Would the Roman Catholic minority in Ontario at about 30% of the population retain Catholic schools?

In difficult economic times would the obligation to provide equalization payments survive a referendum? Consider the resentment in Western Canada over the GST harmonization deal for Newfoundland.

There is a natural reality that occurs because of population imbalances. And that is why minority rights are protected in the Constitution. That is why the federal government is expected not to simply be the rubber stamp for changes to minority rights sought by provinces, but is expected to be the guardian of those rights.

The government of Newfoundland and representatives of your government have pointed to the September referendum result as moral justification for the amendment to Term 17.

The referendum was fundamentally flawed. You and your colleagues were especially critical of the question in the Quebec referendum. The same criticism applies to the question in the Newfoundland referendum. The question was:

Do you support revising Term 17 in the manner proposed by the government to enable reform of the denominational educational system. Yes or No.

Is it a simple question? Is it a clear question? Is it a fair question?

The question was carefully crafted to imply falsely that amendment of the Constitution was necessary in order for reform to occur at all as a matter of law. That was an incorrect proposition.

And who could be against reform? Who thinks that education in the province of Newfoundland or elsewhere in the country is not ripe for reform? The question pitted this desire for reform and effective education for children against a constitutional right - a conflict that does not exist in law at all.

Honourable senators, Cardinal Carter goes on to write:

If each of the denominational classes of persons protected by Term 17 had voted to give up their own rights, no one could seriously object to the proposed amendment on the basis of principle. But that is not what happened. Roman Catholics did not vote to give up their rights. Nor did Pentecostals. The referendum vote was nothing more than a simple case of the majority voting to take away the rights of two minorities in Newfoundland. Is it any different in principle than the English voting to take away the rights of the French? Consider the precedent.

The amendment process under the Constitution requires your government to play the role of guardian of minority rights. If your government rubber stamps an amended Term 17, how can it in principle resist similar requests from voting majorities in Alberta, Ontario and Quebec? Worse yet, the approach taken to this question is a denial of the ideals of the tolerance and pluralism on which this country is founded.

It has been said by supporters of the Newfoundland amendment that it does not form a precedent. I disagree, along with many others including members of your caucus and your party. Asked to comment on this point, Professor Patrick Monahan, Professor of Law at Osgoode Hall Law School said:

I agree that a constitutional amendment to Term 17 that is not supported by all the classes of persons protected by that guarantee could be seen as a precedent that would permit other provinces to seek similar changes.... There is...no basis in principle for the proposition that a person who chooses to give up his or her own denominational rights as a member of a class of persons should be permitted to adversely affect the rights of other individuals who are members of another class of persons altogether.... The amendment to Term 17 would create a risk to denominational school guarantees in other provinces that did not hitherto exist.

Honourable senators, that is what Cardinal Carter had to say about this issue.

Ex-premier Wells and his people have insisted in the four or more years that this file has been active that progress and negotiations with the three school authorities involved in our province seemed impossible. There are three school authorities, not the bureaucracy that has been described in other places at times. There are three —

**The Hon. the Speaker:** Honourable Senator Doody, I regret to inform you that your 15 minutes have expired.

**Senator Doody:** I thought that I was allowed 45 minutes.

**The Hon. the Speaker:** The 45-minute time period only applies to a bill. This is not a bill; it is a motion.

Is leave granted, honourable senators, for Senator Doody to continue?

**Hon. Senators:** Agreed.

**Senator Doody:** Honourable senators, I appreciate the opportunity. I sincerely thought that I was allowed 45 minutes.

Honourable senators, a letter from His Excellency the Archbishop of St. John's to the Prime Minister tells us quite clearly that the main points in contention dealing with administration and costs — which have been pointed out here earlier — have been addressed without recourse to the divisive and unnecessary proposed amendment before us now.

If honourable senators wish me to table the letter from Archbishop MacDonald to the Prime Minister, I will do so. I should add that he received no reply.

• (1510)

Four days after Premier Tobin formed the new Government of Newfoundland, he set up a committee of government officials and representatives of the three religious denominational committees to try to find a solution to this vexing problem. In four days, under the inspired direction of Newfoundland Education Minister Roger Grimes, they came up with answers to all of these problems.

I am told that some of the signatories to this framework agreement are unhappy. To them I say, go back to the table. If all this, which had not been accomplished in four years, was done in four days, then certainly a few more days at the table would be far preferable to the situation in which we now find ourselves.

I wish to address the bizarre situation in the House of Commons where the Reform Party, for its own divisive reasons, and the Bloc Québécois, for very obvious reasons, have supported the government's position on this resolution. The Bloc Québécois, to its credit, has made no secret of its cynical reasoning for supporting the resolution. A cursory reading of the speeches of the members of the Bloc Québécois in this regard will make it perfectly clear to all who are interested. It shows clearly what the separatists propose doing with this issue come their next referendum. This affair is grist for the separatist mill. They will show the Government of Canada and the people of Canada what can be done with a paper-thin majority and a loaded question, and to hell with the rights of minorities.

The referendum question in Newfoundland asked if the public agreed with the concept of education reform. Of course they do; everyone does. The question earned the approval of 54 per cent of those who voted. Only 52 per cent of the electorate voted. This means that 28 per cent voted in favour of the question.

If you accept that a small minority, with a stacked question, is a binding and reasonable way to operate a country, then I can see a very interesting time ahead for us here in Canada. The Conference of Catholic Bishops point this out very clearly in the letters they have sent to the Prime Minister.

As things stand now, honourable senators, with no change at all, the province still has control of the funding of all the schools in Newfoundland, regardless of denomination. It has control of the curriculum and control of most other facets of education, including text materials, student-teacher ratios, funding, teacher education and performance standards. The three denominational education committees want to maintain control of the ethical standards, the moral values, and the cultural and decent approach to education that has been the hallmark of the administration of education in that small province on the east coast.

The religious climate in which the schools are operated will remain, Premier Tobin tells us, as they were prior to this amendment. I and others have asked, if this is indeed the case, why put the people of Newfoundland and Labrador through this emotional wringer? Hopefully, the committee will be able to ask these questions of the experts who are called and they will be able to resolve this question for me.

As I said, I have spoken to ex-premier Wells and to Premier Tobin. They have discussed the matter with me but, quite honestly, they have not satisfied my concerns nor have they satisfied those of the minorities affected in Newfoundland.

I have received briefs from the Pentecostal authorities in Newfoundland, the Roman Catholic authorities, the school boards, the parent-teacher associations and groups of students. I have received briefs from the Ontario Separate School Trustees

Association, from the Ontario Catholic Teachers Association and from groups and individuals all over the country, as I am sure other senators have as well, all expressing concern with this process and, perhaps more important, expressing concern with the end result of this process if it continues to evolve.

We have been told time and again that the situation in Newfoundland is different from that in the rest of Canada because there are no public schools; there is only the denominational school system. That is absolutely correct, there are no public schools because the Government of Newfoundland has never elected to establish public schools. The Government of Newfoundland, like every other provincial government in Canada, has the right to put schools wherever it wants to put schools. If it wants to put public schools in every community in Newfoundland, it has the right to do so. There is nothing in the present law to prevent the Government of Newfoundland from building as many schools as it wants. If parents in Newfoundland want to send their children to public schools, they can do that. The religious denominations do not object to this in any way. The religious denominations are asking that their rights to their own systems, with their own elected school boards, be safeguarded.

The Honourable Leader of the Government mentioned earlier that they are looking forward to having two-thirds elected to the school boards. Two-thirds are elected to the school boards in Newfoundland now. One-third are not elected in order that the minorities in these various denominations will have representation on the board. If the boards were elected entirely by the communities, they would represent only the majority in the community. The Government of Newfoundland has, over the years, reserved the right to save one-third to be named in order that members of different denominations will have a say in the running of the schools in their areas.

The three denominational educational committees have already conceded many points to the government. I understand that these points will come into effect on July 1 through legislation in the House of Assembly in Newfoundland. Education is a provincial jurisdiction and the Government of Newfoundland has the right to legislate.

• (1520)

Among the items agreed to are a united, centrally administered bus service to operate interdenominationally between all the schools under one joint authority to cut costs in this area as much as possible. That has always been a bone of contention in Newfoundland, as it is up here. Everyone talks about all the school buses on the road carrying only three or four kids. Well, you must keep in mind that at some point on the route, there has to be only two or three kids on the bus. They cannot let them all off at one stop for the sake of administrative efficiency of the system. Therefore, you can still look forward to seeing only one, two or three kids on the bus, but the buses will be jointly administered and interdenominational. They will carry children of all religious denominations, as is most efficient.

What is most important, perhaps, in terms of costs saving is that they have agreed to set up a company to supervise school construction and maintenance, and distribute funds on the basis of need. There will be an interdenominational committee consisting of three representatives of the government, one representative of the integrated school system, one representative of the Pentecostal school system and one representative of the Roman Catholic school system, with an independent chairman to be agreed upon. The allocation of funds for school construction and maintenance will be decided by this interdenominational committee. Ten years ago, that would have been unthinkable. Now, it is a fait accompli.

In discussions with government, the denominations have agreed to reduce the number of school boards in the province from 27, which we have heard so much about, to 10 interdenominational boards. They have agreed to examine the viability of the current number of schools. They are estimating the closing of approximately 100 schools over the next five years.

Other concessions can be found, and other points of agreement can be reached, if the Government of Newfoundland would only go the negotiation route and get back to the table, as I said earlier.

Honourable senators, before I close — and I thank you for your indulgence — let me comment on just two of the many strange articles that I have read in the national press on this issue. One of them summed up the situation in my province by saying that what Premier Tobin is doing is simply trying to make the Newfoundland education system the same as Ontario's. I say, "Whoop-de-doo." If that is the ultimate goal for which we should all strive, then count me out. I do not see the policemen in Ontario going around without guns strapped to their hips. I do not see any concern in Newfoundland about gang warfare. I do not hear about comparable murder rates. That is because we have insisted on having the moral and ethical dimension in education in the schools of Newfoundland. That is what the people of Newfoundland want to continue.

Our system has worked well. With all respect to my friends in Ontario, it is a great place to live. I have tried it and survived. My friend Senator Murray is also acclimatizing himself. It is a wonderful province, but in terms of the educational system, I will opt for the one back home.

Another national columnist from Vancouver was horrified that the people in his province should be expected to comment on the educational system in Newfoundland. He, like many of his colleagues, as well as many others, have missed the point completely. This is not about the educational system in Newfoundland. Education is a provincial responsibility, and the people in each province will decide upon the education system that they want. This is about minority rights, the minority rights of the Roman Catholics and Pentecostals in Newfoundland — it has nothing to do with the education system. They will do what they want to do in terms of education. We are all involved in this matter; people in Vancouver, people everywhere.

It is just as John Donne said a long time ago: "Ask not for whom the bell tolls." Believe me, honourable senators, every minority in this country should ask where the bell is tolling on this issue.

#### MOTION IN AMENDMENT

**Hon. C. William Doody:** Honourable senators, I move, seconded by the Honourable Senator Kinsella:

That the motion be not now adopted but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

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

**Hon. Anne C. Cools:** Is it a debatable motion, Your Honour?

**The Hon. the Speaker:** Yes, it is a debatable motion. I believe Senator Kinsella, who is the seconder of the motion, wishes to speak on it.

**Hon. Eymard G. Corbin:** Senator Doody said that he would willingly table a certain letter. Could he also table Cardinal Carter's letter from which he quoted extensively?

**Senator Doody:** I would be pleased to do that, honourable senators. I will also table the letter from the Canadian Conference of Catholic Bishops, which is also pertinent.

**Hon. Noël A. Kinsella:** Honourable senators, I rise to support Senator Doody's motion not to adopt the proposed constitutional resolution now but, rather, to have it first examined by a Senate committee.

Honourable senator, I preface my remarks by making an observation concerning the quality of education in the province of Newfoundland and Labrador. For the past 32 years, I have been a university professor in Atlantic Canada. Over those years, students from high schools in the province of Newfoundland have been among the best prepared for university work.

Honourable senators, it is my opinion that a number of very important questions of national interest need to be answered before we in this chamber could be in a position to have an informed debate on the proposed resolution. Some of these questions include the following:

First, is the proposed constitutional change consistent with Canada's obligations under the United Nations International Covenant on Economic, Social and Cultural Rights and, in particular, Article 13(3)? Honourable senators will know that Canada ratified that covenant in 1976 with the agreement in writing of every jurisdiction in Canada: federal, provincial and territorial.

Second, is the proposal congruent with UNESCO's Convention Against Discrimination in Education? Is the resolution compatible with the 1989 Convention on the Rights of the Child?

Third, does the proposed constitutional change have any bearing on the matter of minority rights? Does the phrase contained in the actual text of the current Term 17, namely, "class or classes of persons," which phrase was drawn to our attention by Senator Doody, define minority rights as they are presently protected constitutionally?

Fourth, what are the constitutionally protected rights which will be affected by this proposed change?

Fifth, do the classes of persons who currently possess the defined rights have a claim to be at least consulted, if not a moral veto over the exercise of the state power which will strip them of their present constitutionally protected rights?

Sixth, is there any evidence that the process to date involving the Government of Newfoundland and Labrador, on the one hand, and the House of Commons, on the other hand, reasonably raises for members of this chamber the suspicion of an abuse of power?

If one were to apply the test which we use in Canada to determine whether, in a free and democratic society, certain of our Charter rights can be limited, then what would our judgment be if we were to assess this proposal against the question: Is it a measure that is necessary?

Honourable senators will recall that the test which the court uses to determine when, in a free and democratic society, we can legitimately limit rights was established by the *Oakes* case. Senator Doody has argued and presented evidence to show that it is a measure that is not necessary.

The next question is: Is the measure proportionate to the laudable objective of reforming the educational system? Further: Does the measure impede the currently held rights of classes of persons in a minimal way?

• (1530)

The committee needs to hear from experts on whether the desired objective to reform the educational system can be met within the current framework of Term 17. Many observers today have suggested that it can. Our committee needs to canvass that issue if we are to have an informed debate in this chamber.

Indeed, honourable senators, I suggest that our committee would be helped by hearing from the Honourable Mr. Grimes, to whom Senator Doody has alluded; Mr. Grimes being the Minister of Education for Newfoundland and Labrador. We were reminded that it was Mr. Grimes who spoke of a framework agreement that he was able to reach with the stakeholders.

Honourable senators, our committee should hear from constitutional experts on the kind of agreement which could be reached, and which would meet the terms and conditions of the present Term 17 and, therefore, obviate the need to place in jeopardy constitutional guarantees that have been part of the compact with Canada since 1948-49.

Our committee, I would hope, would ask what precedent is being set in terms of minority/majority relations with respect to rights. Our committee will wish to ask what effect the referendum held on the question in Newfoundland will have on the rest of Canada. After all, the perspective which Parliament brings to this analysis is the national perspective; the resolution in the province of Newfoundland and Labrador was a provincial perspective. Our judgment is qualitatively and quantitatively a different kind of judgement. We can only make that judgment if we are assisted in our analysis by the detailed study of these kinds of questions by the committee, and there are a number of experts who could be heard on that particular topic.

Given the fact, honourable senators, that the present Term 17 provides that:

...the Legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational schools, common (amalgamated) schools, or denominational colleges, that any class or classes of persons have by law in Newfoundland at the date of Union...

is it not reasonable and fair that the Senate should hear from the representatives of such class or classes of persons, as defined in the Constitution of today? I suggest that we can best hear from such representatives through the committee process.

Also, given the fact that the Senate has, as Senator Doody reminded us, as recently as 1987 adopted a constitutional resolution establishing for the Pentecostal Assemblies for Newfoundland and Labrador the same rights, is it not reasonable and fair that we should hear from that class of persons whose rights, clearly, will be affected?

The Senate committee will need to canvass the constitutional impact or import of the Supreme Court of Canada in its decisions relating to what it has called on several cases the obligation to respect "the basic compact of Confederation."

Is it appropriate for a referendum, which determines the expression of majority opinion, to be used to extinguish the rights of classes of persons who, by themselves, individually constitute minorities? The committee might well reflect on the question of whether the referendum should have been conducted in a manner in which each of the seven classes or the main three classes of persons whose rights are being affected could have indicated their respective decisions.

In conclusion, there are many other kinds of questions, but it seems to me that the question which surrounds the basic compact which brought Newfoundland into Confederation and how it is being breached by this present proposal must be canvassed, and it must be canvassed in a manner in which we can hear from those citizens whose constitutionally guaranteed rights are in jeopardy, and indeed will be completely annulled should this measure pass.

What pressing national interest of Canada, as a whole, would be harmed if the Senate indeed were to reject the proposed resolution?

[Translation]

**Hon. Marcel Prud'homme:** Honourable senators, I do not intend to take part in the debate for very long, and you will see why. Unusually for me, I am a bit short of breath today.

Honourable senators, you are all aware of my interest in this question.

[English]

I have shown my interest because, as a Canadian, I believe that we do not have a Constitution simply for the pleasure of having a Constitution.

When the people of Newfoundland started to talk about amending Term 17, my sensitivity to people and the rights of people in this country urged me to pay great attention to the debate. I did not wait for the presentation in the Senate or in the House of Commons. I went so far as to go to Newfoundland during the referendum. I was very kindly and well received by a fine gentleman, Mr. Wells, and we had more than an hour of very flamboyant discussion. We have the same character when we debate, in that we are very passionate, but we had a very civilized discussion on this issue. Since then, I have paid great attention to the development of what is now taking place today in the Senate.

I have always felt strongly that the Senate exists exactly for these great events and times that are taking place in this country. Why do we have a Senate? Why did they invent the Senate when the Fathers of Confederation decided that there would be a country? There was an elected house. I was there for 30 years. I always defended the Senate, never believing that I would come here. All my speeches in the House of Commons prove my past. I said that it will be for Canadians to decide what to do with the Senate eventually, but while the Senate is there, it has a constitutional right to look at matters such as that which is facing us today.

The Senate was invented and created to defend minority and regional rights. I was very pleased to hear the Honourable Senator Doody refer to Mr. Lincoln and his very famous speech in the National Assembly, when he felt that the rights of the English-speaking minority in that province were affected, and he said that rights are rights are rights.

• (1540)

I was there and I applauded him. Even the separatists applauded him. Of course, they disagree with him, but they were absolutely taken up by the passion that he showed in his attachment to rights.

I share that same passion today. I have always done so. I say that you do not touch a Canadian because of his colour, because of his opinion, because of his religion. Anyone touches one of my Quebecers because he is black, because he is Protestant or because he is Jewish, then he touches me. If he touches me, then I shall stand up in defence. Today I intend to do that.

I must rejoice, after having raised the issue here, that we will hold hearings as I have been requesting. We will listen to what people have to say. I fully endorse the opinion expressed by Senator Doody. Yes, hearings should be held in Newfoundland. I do not agree with Senator Doody's comment, "at least in St. John's." Hearings should be held all over the province; it will be easier for people to be heard. They have the right to be heard because they joined Confederation in 1949 with conditions.

One of those conditions, honourable senators, was Term 17. If I were a Newfoundlander and a little older, I would probably remember having voted in 1949.

Some voted because they wanted to have a ferry system. We may change those conditions, but we will honour them. I am sure Senator Doody will correct me if I am wrong in that statement. We cannot compare touching the education system to the fact that, three times so far, the Senate has accepted changes to the Constitution.

**Senator Doody:** Those changes did not take anything away.

**Senator Prud'homme:** Exactly. I was very suspicious when I voted here, in one of my first votes, on a new link with PEI. That was adding, honourable senators, not subtracting. When the Pentecostal matter was before us in 1987, the amendment did not subtract rights, it added rights. The same comment applies to the situation involving New Brunswick; we were adding rights.

Now we are in the process, most likely, of subtracting rights. It is important for us to hold committee hearings on this proposed amendment to learn more about it.

Why should we know more? I followed the debate in the House of Commons on Friday, May 31, beginning at ten o'clock. Honourable senators, the matter was debated in the House of Commons from ten o'clock until eleven o'clock on Friday last, and then from 12:05 to 1:30. That was it.

At no time, for instance, was there a quorum, but no one raised that problem. That shows how interested people are when you touch something as fundamental as taking away the rights of a class of people. I can tell you who was there and what they did. The press was not there. They cannot understand who would be interested in the debate. I sat in the press gallery because, from that vantage point, I could see both sides and count the members in attendance.

At 10:07, 14 members were present, and by 10:20, they were down to 13. At 10:25, there were 15 members. On and on it went. This may be sound trivial but it shows that they did not give this matter much attention. Yet, one member there was so eloquently in favour of what was taking place that it raised my suspicions. I am referring to Mr. Bellehumeur, a young, dynamic, outspoken member of the Bloc. Listening to him attentively, I detected the major motivation of the Bloc, giving their entire support to their new-found friend and ally Mr. Tobin and to my friends in the Liberal Government of Canada.

Honourable senators, I suggest that during the weekend, you read the comments of Mr. Bellehumeur at page 3247 of the

House of Commons *Hansard* of May 31, 1996. He told us exactly what their motivation was. He said he wanted to establish a precedent that 50 per cent means 50 per cent. Then, eventually, when there is something else that will take place in this country, 50 per cent will mean 50 per cent too. What a great motivation for giving their support to such an unbelievable piece of legislation.

I must ask always myself: What is a Constitution? Why do we have a Constitution? I am a Canadian. I trust that the Constitution will protect me as a full Canadian. That is the importance for those who ask: What is a Constitution and why do we need one?

The purpose of a Constitution is to protect people and to lay down how we will behave with each other. We cannot tamper with the promises which were made to win Newfoundlanders over to vote for Confederation in 1949, promises of old age pensions, of family allowances, of a ferry system and, just to make sure the votes would reach 50 per cent — read Mr. Bellehumeur's speech — Term 17 was added.

I see three prominent senators from Newfoundland here. I stand to be corrected by them and if I am wrong, I apologize.

Those promises were made. The contract was signed.

As I listened attentively to both sides, I became more and more confused.

I suggest, honourable senators, you also read the speech of Mr. George Baker, MP, from Newfoundland. He raised good points which must be answered.

I would further suggest that honourable senators read the speech of Mr. Mills who used to be a proud Liberal. He is still a good friend of mine and, I know, of many Liberals. He offered an amendment which should be refined. I am sure we will have that in committee.

Honourable senators, if there was a time when the Senate had a job to do, it is today.

I have read the royal commission report. I do not suggest that for summer reading to any member. It is a very thick document, but it is one way to inform yourself about a province. There is much food for thought. Much of what has been suggested in the report is already taking place. Fewer school boards and common busing were reasons put forward for a constitutional amendment. These changes are already taking place and, with public pressure, they could take place much faster.

• (1550)

What is preventing people from having public schools? We will find out at the hearings. Senator Doody will be there, I am sure, with other senators. We will listen and we will find a way to address the concerns of all Newfoundlanders without an amendment to Term 17.



I, too, take strong objection to what the press is writing in Quebec and in *The Globe and Mail*. They are not following the debate exactly as they should. I share what the Honourable Senator Doody said with respect to the downgrading of the educational system in Newfoundland and the fact that some members said that Grade 12 in Newfoundland is equivalent to Grade 8 in Ontario. How do you expect to build a friendly country by advancing stupidities of that kind? I am glad that Mr. Baker set the clock right.

There were only two days of debate on this issue in the House of Commons. It does not take long to read two days of debate. On Friday, May 31, the subject was debated for two hours and a few minutes. On Monday, June 3, there was a day's debate that terminated with an amendment and a vote. I read the French Debates last night, and a minute ago I asked for the English *Hansard*.

Honourable senators, I am not here to convince you one way or the other. I am not here to say that we, as senators, should vote against this resolution or that we should vote for it. However, I must change my approach since Senator Fairbairn has said that this matter will go to committee. She knows that this is what I really wanted to hear. I want to give people a fair hearing. I am satisfied.

Of course, I am not a member of the committee. I keep repeating the same thing. Perhaps I will become a member of a committee some day. Must I join a party to be a member and do my work? I do not know. For the moment, I hope not. If the committee travels to Newfoundland, I will definitely go at my own expense.

I will conclude by saying that the more we hear about this issue, the more confused we become. The more new opinions are expressed, the more convinced I am that this committee should take its time and do a good job for Canada. Those who said that nothing has taken place since 1949 are not correct. As recently as 1987, we discussed Term 17. I was in the House of Commons at that time. No one raised the issue that it was the worst educational system in Canada. Has it become the worst since 1987? No one has made a speech saying that it is horrible.

**The Hon. the Speaker:** Honourable senators, I regret to inform the Honourable Senator Prud'homme that his time has expired.

**Senator Prud'homme:** Perhaps I could have your indulgence for two minutes, honourable senators.

**The Hon. the Speaker:** Honourable senators, is leave granted to allow Senator Prud'homme to continue?

**Hon. Senators:** Agreed.

**Senator Prud'homme:** Honourable senators, I am extremely happy for the people of Newfoundland because I now know that they will be given a fair hearing. It must be a fair hearing and not a "bang-bang" hearing.

I trust that the three letters put forward by Senator Doody will not merely be tabled. Tabling these letters does not mean that all senators will have time to read them if they want to do so. I would ask that they be appended to today's proceedings so that we will have a complete picture of what is being said. The government has had time to put its views in a booklet, a catechism. Now we will hear from the other side so that we will be better informed when it comes time to vote on this matter.

Honourable senators, I urge you to pay enormous attention to this debate. It is one of the most important debates in the many years that I have been in the Senate because our decision could have many repercussions.

Honourable senators, our deliberations on this matter will bring honour to the Senate. We are in the position to hold hearings, regardless of what the press tells Canadians. I will resolutely defend that position. I was asked, "What is the Senate doing?"

[Translation]

Why is the Senate getting involved?

[English]

It is our duty to look into this matter. As I said to the CBC —

[Translation]

It is our duty to get involved in this important issue.

[English]

**Senator Cools:** Honourable senators, I will take the adjournment.

**The Hon. the Speaker:** Honourable Senator Robichaud, do you wish to speak?

[Translation]

**Hon. Louis J. Robichaud:** Honourable senators, quite frankly, I had not intended to say anything today.

[English]

I had not intended to say anything, but I was impressed with the speeches that I heard from both sides of the house. I was particularly impressed when the point was made, rather strongly, that minority rights will be taken away from people. If that is the case, I am definitely opposed to any changes. I am not opposed to changes per se because I was responsible for massive reform in the educational system in New Brunswick when I was premier. I am not opposed to reform, but I made sure that minority rights were protected. If the amendment to the Constitution in this case withdraws minority rights in Newfoundland, then I would be deadily opposed to it. I am not convinced yet that it does; only a committee can determine that.

I approve of the matter being referred to the Standing Senate Committee on Legal and Constitutional Affairs. I approve travelling possibly to St. John's because the facts must be known to the Senate. Senators were appointed to protect minority rights. I would approve a budget to travel to Newfoundland if it ensures that minority rights will be protected.

As I say, I did not intend to speak today. Perhaps I am disappointing someone, but I had to say something about the question of principle.

On motion of Senator Cools, debate adjourned.

### PRIVATE BILL

#### QUEEN'S UNIVERSITY AT KINGSTON—FIRST READING

Leave having been given to revert to Introduction and First Reading of Private Bills:

**Hon. Lowell Murray** presented Bill S-8, respecting Queen's University of Kingston.

Bill read first time.

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

On motion of Senator Murray, bill placed on the Orders of the Day for second reading on Monday, June 10, 1996.

### SCRUTINY OF REGULATIONS

#### SECOND REPORT OF STANDING JOINT COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Joint Committee for the Scrutiny of Regulations (amendment to the Canada Business Corporation Regulations), presented in the Senate on May 30, 1996.

**Hon. Richard J. Stanbury**, for Senator Lewis, moved the adoption of the report.

Motion agreed to and report adopted.

### CAPE BRETON DEVELOPMENT CORPORATION

#### FIRST REPORT OF SPECIAL COMMITTEE ADOPTED

The Senate proceeded to consideration of the first report of the Special Senate Committee on the Cape Breton Development Corporation, presented in the Senate on May 30, 1996.

**Hon. Richard J. Stanbury**, for Senator Rompkey, moved the adoption of the report.

Motion agreed to and report adopted.

### POST-SECONDARY EDUCATION

#### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming the debate on the inquiry of the Honourable Senator Bonnell, calling the attention of the Senate to the serious state of post-secondary education in Canada.—(*Honourable Senator Berntson*).

**Hon. Dalia Wood:** Honourable senators, I rise today to take part in Senator Bonnell's inquiry into the state of post-secondary education in Canada.

The time is long past in this country when one could come out of high school with a grade 12 diploma, find a decent job, get married and have children, and be almost assured of living happily ever after. In those days, only the privileged could attend a post-secondary institution, but at least those who could not attend for financial reason could provide for themselves and their families.

However, due to many factors, including technological and medical advances, and the broadening of Canada's market and economic base, a grade 12 diploma becomes less and less adequate. Our economy has created a demand for a better trained labour force. Young people with only a secondary school education find getting a job more and more difficult. The government realized this, and encouraged youth to go forward in this more specialized work environment by instituting and funding student loan programs, and by making post-secondary education more accessible to young people wanting to attend college and university.

Honourable senators, the structure of our economy and fabric of our society is changing once again. Jobs are few and far between and job security and stability are things of the past. Even those who presently have jobs will always have to consider retraining if they want to keep the job they currently have, or be able to obtain another one when told that their position is redundant. As well, higher tuition fees and cuts to student loan funding are once again teaming up to make post-secondary education an option available only to the elite in this country.

An article by Ross Finnie and Gaetan Garneau entitled "An Analysis of Student Borrowing for Post-Secondary Education" informs us that students who graduated with a four-year Bachelor's degree in 1994 would have paid approximately 53 per cent more than the same student would have paid had he or she graduated in 1990. The class of 1997 will probably pay somewhere in the area of 76 per cent more than the class of 1990 if tuition rates remain at the 1993-94 levels. Honourable senators, that amounts to dollar increases of approximately \$2,400 for 1994 and \$3,500 for 1997 graduates.

There is also the question of repayment of student loans and the interest applied thereto. In 1995, major changes to the Canada Students Loans Program was announced by the Honourable Lloyd Axworthy, Minister of Human Resources Development. These changes were to respond to serious problems with accessibility, flexibility and accountability.

Mr. Axworthy said at that time:

What is needed is greater assistance to those most in need and increased flexibility in repayment to make post-secondary education more accessible and secure.

What perhaps was not foreseen at that time was that the banks, which are now providing the loans, would have the students repay the loans with interest rates fixed at prime plus 5 per cent. This places an extra burden on students and poses another hurdle to post-secondary education.

Honourable senators, repayment problems are directly related to labour market status for graduates. In other words, a student who does not find a job, or only a part-time job, after graduation will not be able to make the required payments on their student loans. A study of alternative solutions to such repayment problems, such as repayment in community service, would be in order.

• (1610)

Another related issue is that of mobility. In today's economic times, students must not be hindered in any way. On May 29, 1996, the *Montreal Gazette* reported that the Government of Quebec had decided to cut off financial aid to students who choose to study in the English language outside the province of Quebec as of September 1996. This province will, however, still fund out-of-province studies for those wishing to study in the French language.

Honourable senators, this is an absolute affront to the principle of equality and mobility as defined in our Charter of Rights and Freedoms. No other province discriminates against students in this way. The Senate of Canada should take such matters into its cognizance.

In a speech to the fourteenth Annual Plenary of the Interaction Council of Former Heads of State and Government on May 19, 1996, in Vancouver, Prime Minister Chrétien said:

If we expect our citizens to be adaptable in this rapidly-changing world, we should be prepared to provide the right training and education to help, because we know that future generations in a globalized economy cannot be guaranteed good jobs without a higher education. We must also provide an adequate social safety net, especially for the most vulnerable, to reassure them that those who cannot adjust can be afforded a measure of protection.

Honourable senators, the younger generation is being forced to adapt to the demands of an unforgiving marketplace and to use their talents and knowledge as best they can without the benefit of access to colleges and universities which could give them a fighting chance at economic survival. We, as parliamentarians, must ensure that the knowledge and training they need is at their disposal. The Senate must examine the post-secondary institutions that it funds and inquire as to how those funds are being used.

I have been listening to the debate in this chamber on this issue, and I realize that education is within the jurisdiction of the provinces. However, I believe that Parliament has a duty to monitor what is being done in the field of education for it has an impact on employment insurance and other areas of federal jurisdiction. The future of our youth is an issue of national concern that deserves our attention. If the current post-secondary system is not functioning, perhaps it is time to reconsider the way Parliament is spending its money. For example, we could be providing more financial assistance directly to students. We have an obligation to consider other options, options that would allow us to maximize our resources and better respond to the needs of our youth.

Honourable senators, today's youth is tomorrow's hope for prosperity. We can no longer afford to leave the consideration of post-secondary education to others. Study is needed. I support Senator Bonnell's initiative to have the Senate examine these issues. Let us not forget our youth.

**Hon. Sharon Carstairs:** Honourable senators, I want to begin by thanking Senator Bonnell for his inquiry on this matter. In considering the remarks that I would like to make, I began to think about the historical perspective of just what is a public education in Canada.

I think we should cast our minds back to the early history of this country when public schools were first established. No matter what province we are speaking of or, indeed, the territories, schools generally, in their first instance, covered only grades 1 to 6. Sometimes, they covered grades 7 and 8. Students then entered high school.

In the early years of high school education in Canada, high school was considered to be the purview of the very bright and the academically talented. Generally, it was available to those whose families were wealthy or whose families placed an extremely high value on education.

Gradually, grades 9, 10 and 11 became totally funded from public revenue. However, many of you in this chamber will remember, as I do, the days when we paid for textbooks in grades 9, 10 and 11. We did that because those grades were not considered to be quite as important as grades 1 to 8 and therefore were not as generally available.

In some provinces, the addition of grade 12 was late in coming. I again ask honourable senators to cast their minds back to when we had that interesting phenomena called junior matriculation and senior matriculation. Junior matriculation was grade 11; senior matriculation was grade 12. I remember the shock of my high school students when I admitted that I had not graduated from high school. They said, "What do you mean you did not graduate from high school?" I said, "Well, I chose to go to university after grade 11, after junior matriculation." Indeed, because grade 12 was the graduation year, I did not graduate from high school.

That process resulted in a very strange anomaly in Nova Scotia in those days. If you remained in Halifax public high school or Catholic high school for grade 12, you of course paid no tuition. However, if you left after grade 11 and went to first year university at Dalhousie, then you had to pay tuition fees. In my case, it did not make any difference because I was a student at the Convent of the Sacred Heart. I was already in a private school system and my parents were paying tuition fees. However, those who shared that similar convent experience will recall that it was a rather restrictive environment. Although I was only 15 at the time, I could hardly wait to get to a public university. I persuaded my very reluctant father that I should be allowed to go to university and not complete grade 12. To me, university represented a great deal of freedom and, I must say, my marks in first year reflected that.

Honourable senators, it is important to reflect on the reasons why public education became more and more an obligation of the public purse. As society became less rural and more technologically driven the need for young people to be better educated became more and more apparent. I remember classmates in Halifax who left school at the end of grade 8. The boys left to become messengers for CNCP Telecommunications. Others left to go to work on the Halifax docks, and I knew of many who went to work in the mines. Some of the girls left to go into domestic service. Others worked at the Moir's chocolate factory dipping chocolate, which was also located in Halifax. Others left to attend Halifax Vocational School which, in those days, did not grant a high school diploma. It granted diplomas, but they were not high school diplomas. They were certificates for secretarial science, electricity or plumbing, and it was not until much later that those certificates actually resulted in a high school diploma.

All of that has changed, honourable senators. Almost all Canadian children attend high school today. We often hear of drop-out rates of 25 per cent; but, in reality, that does not reflect the drop-in rate. Although some leave for a year or two, many return. Approximately 80 per cent of young people today actually graduate with high school diplomas. More and more of them are finding that that is simply not adequate. Because our society has become more complex, more technologically driven and more information driven they need to pursue their education even further.

Who gets to attend this further education in our community colleges and universities, honourable senators? If you were to

conduct a survey of any group of students, you would discover, to my dismay at least, that those who come from affluent families, those families whose annual income is above the Canadian average, are represented in a disproportionate amount. The young people whose family members have a higher level of education, often just because they have that value, are there in very high numbers.

Let me take my own family as an example. Neither of my parents had the opportunity to attend university. My mother was a graduate nurse. My father had dropped out of university after first year because his father was killed as a result of the Halifax explosion. They were insistent that their children attend university. Indeed, my mother was insistent that her daughters promise her faithfully on the Bible that we not marry until we received our second degrees.

• (1620)

What about those young people who do not have the perspective of either an affluent family or a family which values education? Many of those young people realize that in our society today they must continue along the educational path, but many of them do it at a great deal of personal sacrifice.

It is imperative that a major review of access to post-secondary education takes place in this country.

Among the questions that we must ask is whether the federal taxation system should be used in the way in which it is used in Australia. There are no tuition fees in Australia, but once you graduate from a post-secondary institution, whether it be a community college or a university, you pay for the privilege of having achieved that academic experience through the taxation system. In some ways, they are more fortunate than we are in Canada because their students do not have ready access to moving south of the border. If you move south in Australia, you just about drop off the globe. However, the reality is that they have instituted a system that works and makes post-secondary education accessible to all who wish to achieve it.

Another area which I think requires examination in this country is the role of community colleges. For many, these are the first steps after high school, and they vary terrifically from place to place in this country. Cégeps in the province of Quebec, for example, tend to focus on academic programs, although they have other programs. My province's experience is almost entirely of a technical nature. Community colleges in Manitoba, Red River, Kewatin, and Assiniboine are used primarily for training in specific occupations. They vary in the credits they give from child care to drafting, mining and agriculture. Regrettably, there are insufficient places for the students in the province of Manitoba who wish to attend.

Former Senator Duff Roblin, along with Kevin Kavanaugh and Kathleen Richardson, in a significant report done on post-secondary education in Manitoba just a few years ago, pointed clearly to the lack of potential for young people to attend community colleges in the province, as well as the need for the courses in those schools to be both planned and flexible.

I understand that similar problems exist within our universities. Surely it can be the role of the federal institution to identify our strengths from coast to coast to coast in post-secondary education and to encourage the further evolution of our post-secondary experience.

There are also problems at our university level. If we lived in an ideal society in this nation, every province would be able to offer the optimum in programs to all of their students. However, we do not live in an ideal society because our provinces vary greatly in their size and therefore in their potential to offer the broadest possible education to their students.

The University of Manitoba, for example, has a school of dentistry. Students from across the country are educated in that discipline at the University of Manitoba. In fact, I have been told that the majority of them come from places other than the province of Manitoba. This is the most expensive university education that we offer in Canada. It is more expensive than medicine. Yet, we do not appear to be doing an evaluation of the number of places that we require in dentistry across the nation so that we can identify whether we have too many places, or too few places, if that might be the case. We have done that, for example, in the field of veterinary medicine, where we have regional schools rather than provincial schools, yet all provinces have certain quotas that they can send to those schools.

I think that the recent decision made at the universities in Halifax is truly exciting. Dalhousie, King's, St. Mary's, the technical University of Nova Scotia and Mount Saint Vincent University have got gotten together to realize that they can take a cooperative approach to the running of their universities. Imagine! Five universities in the same city, and they will be allowed to take courses at one another's institutions. How revolutionary!

I attended a university in Massachusetts in 1962 that allowed me to do that. I attended Smith College, but I was allowed to take courses at Amherst, the University of Massachusetts, and Mount Holyoke. A bus ran between the four towns in which these universities were located.

Up to this point, if you were a student at Mount Saint Vincent University, you had difficulty getting your credit recognized at Dalhousie University. I see some of our pages smiling because they know the experiences they are having in similar circumstances. What they are doing in Halifax is progressive — long overdue, but progressive.

It is that kind of experimentation that we could examine in a Senate committee and then share that information with the provinces. Of course, we do not have control of education. That is a provincial responsibility, and it should be a provincial responsibility. However, there are steps that we can take as a federal institution to ensure that there is an understanding of the educational experiences across the nation, and we can share that knowledge.

I hope that Senator Bonnell's study goes forward because, honourable senators, our young people deserve better than they are presently getting. They need better counselling as to the programs that are available to them. They need better

programming. They need enriched academic programs. Our country needs to maximize the talents and abilities of every single young person that we have the privilege of having live in this country.

On motion of Senator Kinsella, for Senator Berntson, debate adjourned.

## CHILD ABUSE AND NEGLECT

### INQUIRY

**Hon. Anne C. Cools** rose pursuant to notice of Thursday, May 30, 1996:

That she will call the attention of the Senate to the child abuse and neglect (CAN) death of six-month old Sara Podniewicz, known as Sara Olsen, at the hands of her parents, Lisa Olsen and Michael Podniewicz, on April 24, 1994 in Toronto, Ontario; and to her autopsy; and to her parents' conviction and sentence for second degree murder; and to their treatment of their other children; and to the actions of the Catholic Children's Aid Society, the Canadian Mothercraft Society and Corrections Canada in this case.

She said: Honourable senators, I rise to speak to the terrible and tragic child abuse neglect, CAN, murder of six-month-old Sara Podniewicz of Toronto. This particular case drives home the fragility, vulnerability and dependence of children and their need for protection.

On April 25, 1994, baby Sara's parents, Lisa Olsen and Michael Podniewicz, called 911 emergency services, screaming that their baby had stopped breathing. Constable Brian Gill was among the first policemen to arrive at their home. This was his first case of this kind. He attempted to resuscitate the infant. His partner, Constable Robert Guptill, noticed that Sara's vital signs were absent and that her arms were stiffly raised from her body. Ian McClelland, a seasoned paramedic with the Metropolitan Toronto Ambulance Service, knew that Sara was dead, but he and his partner attempted life-saving manoeuvres according to their prescribed procedures. On arrival at St. John's Health Centre, Dr. Richard Kim confirmed that Sara was dead. Parents Olsen and Podniewicz wept bitterly.

All, especially the police, were sympathetic to the suffering parents, suspecting nothing. However, the autopsy performed at the Hospital for Sick Children in Toronto by Dr. Charles Smith, a paediatric forensic pathologist, revealed that baby Sara had been dead 3 to 12 hours prior to the 911 call. Further, the nature of the injuries did not match the parents' accounts of how the injuries occurred.

Baby Sara's parents, Lisa Olsen and Michael Podniewicz, were both charged with second-degree murder. They were tried a few weeks ago by Mr. Justice John O'Driscoll and a jury, with Lesley Baldwin as crown prosecutor. They were found guilty and Mr. Justice O'Driscoll will determine sentence and parole eligibility on June 24, 1996.

Six-month-old infant Sara Olsen, who weighed approximately six pounds at birth, weighed only 10 pounds when she died. The autopsy revealed that she suffered greatly before her death. Sara's injuries included 15 fractured ribs in various stages of healing, indicating different and several incidents of physical abuse. Her right arm was broken in one place, the left in two. Both thigh bones were fractured. The total number of fractures was 20. She had bled around her spinal cord and into her lungs, and she had had an ear infection.

Dr. Paul Babyn, a paediatric radiologist with knowledge of non-accidental trauma in children, testified at the second-degree murder trial of her parents that:

When you take the constellation of injuries, I have not seen it other than in dramatic...motor vehicle accidents where the child is dead or, in one case, a child who got mauled in a trash compactor.

Dr. Marcellina Mian of the Suspected Child Abuse and Neglect program, SCAN, at the Hospital for Sick Children in Toronto, testified that Sara also suffered from "failure to thrive syndrome," saying:

Obviously a child who is not fed adequately is being neglected...Neglect is abuse by omission.

Paediatric forensic pathologist Dr. Charles Smith of the Hospital for Sick Children wrote the cause of death in his autopsy report, dated October 28, 1994, as:

I hereby certify that I have examined this body, have opened and examined the above-noted cavities and organs as indicated, and that in my opinion the cause of death was: acute bronchopneumonia complicating thoracic trauma.

Honourable senators, the medical cause of death was pneumonia, but her physical condition was so poor that she could have died of multiple causes.

Lesley Baldwin, the Crown Prosecutor, stated in her opening statement at the trial that:

In summary, she was dead for a significant period of time, before any medical personnel were contacted.... she had multiple fractures that are consistent with the intentional infliction of severe force and she ultimately died of pneumonia due to the injuries she sustained to her chest.

Baby Sara would have been coughing up blood for days before her death. Despite her suffering, despite all the physical signs of illness, her parents, mindful of their own self-protection in avoiding detection, sought no medical help for this defenceless infant.

Honourable senators, I shall review some of the pathologies and privations of this family. Both Lisa Olsen and Michael Podniewicz are crack cocaine addicts. They do not work and live on welfare. They are unmarried and, since 1987, have had a volatile and unstable common-law relationship. They have seven

children, six from this relationship and one from Lisa's previous liaison. The seventh child was born during this trial and the sixth during the preliminary hearing of this trial.

At least one of these seven children, and probably baby Sara as well, were conceived during conjugal visits by Olsen to Podniewicz when he was imprisoned for five years on a conviction of assault for brutally injuring their eldest son, Mikey, on June 14, 1988. Mikey, then only 10 weeks old, now 8 years old, suffered severe brain damage from Podniewicz's attack. Mikey is blind, deaf, partially paralysed and has a mental age of 10 weeks. He is in foster care and will require constant care for the rest of his life which is expected to be short, probably only to his teens.

Kalev Helde of the Catholic Children's Aid Society testified at the parents' trial for Sara's murder that Mikey's injuries stand out among the 300 cases he had seen up to 1988. He stated:

Mikey Jr.'s case was especially significant to me because the quality of life had been compromised so much.

As a result of this, the Catholic Children's Aid Society issued a supervision order and placed Olsen's and Podniewicz's names on Ontario's Child Abuse Registry. In addition, the Society apprehended two of Olsen's other children and placed them into care.

The Catholic Children's Aid Society subsequently returned these children to mother, Lisa Olsen. About this, Christie Blatchford reported in her *Toronto Sun* article of March 1, 1996, entitled "Tears for Sara Aren't Enough":

...the Society concluded, '...she will be able to protect' the children 'from any potential risk in the event of Michael Podniewicz's release from custody'...

Michael Podniewicz was released from penitentiary on parole with the parole condition that he was never to be alone with the children. Shortly after his release, little Sara was dead.

Honourable senators, no one protected Sara from her parents.

I spoke in this chamber on March 21, 1996, about Judge Thomas Gove's concerns regarding child protection services and certain failures therein in British Columbia. Those concerns were published in his "Report of the Gove Inquiry into Child Protection in British Columbia." Sara Olsen is another poignant example of a failure in child protection services in Canada, this time in Toronto, Ontario.

The Catholic Children's Aid Society social worker for this family was Susan Demelo Grant. Her role was to work with the family to ensure that the children were being well cared for and not abused in any way. In the 15 months beginning January 1993, 10 months before Sara's birth, Susan Demelo Grant visited the family 12 times. Not once did she ever visit the children's bedrooms.

During Susan Demelo Grant's second visit to the family home, she saw Michael Podniewicz alone with the children, clearly in breach of his parole conditions. In her testimony, she explained

her non-intervention, stating that Mr. Podniewicz was not officially on parole at the time as he was living in a halfway house in Toronto. Further, at mother Lisa's request, Demelo Grant, in January 1994, attempted to have this parole condition removed.

Demelo Grant's last visit to the family was on April 6, 1996. Observing that Sara had a cast on her arm, she began to have concerns about Sara's abuse. Sara was dead days later, on April 25, 1994.

About Sara's broken arm, Demelo Grant, during testimony at the murder trial, stated that there was a:

...high possibility that Sara's injury was inflicted by the parents.

Though aware that Podniewicz was convicted and sentenced for assaulting his first-born son Mikey, her only action was to direct a health specialist with the Catholic Children's Aid Society to look into it. Her testimony also revealed that she was unaware that both Olsen and Podniewicz were listed on the agency's Child Abuse Registry.

Sam Pazzano, in a May 3, 1996 *Toronto Sun* article, "Watchdog Unaware of Abuse Warning," reported:

Demelo Grant explained yesterday to Justice John O'Driscoll that the registry information was 'in the microfiche file, but I didn't retain that information.'

Honourable senators, the fact that these abusers' names were listed in the provincial Child Abuse Registry did not prevent the abuse and murder of this child because the Children's Aid worker simply did not use the information.

I remind senators of a similar case, that of Kim Anne Popen who died on August 11, 1976, where the Child Abuse Registry was not consulted by Children's Aid workers. In his 1982 report entitled "Judicial Inquiry Into the Care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and the County of Lambton," Judge Ward Allen informed that the Child Abuse Registry had not protected Kim Anne Popen, saying:

...the information contained in the Register is rarely used by the local Children's Aid Societies.

Honourable senators, these same tragedies of children's abuse and death keep being repeated, frequently with the same patterns and characteristics.

The Catholic Children's Aid Society was not alone in failing to protect baby Sara from harm. Another organization was the Canadian Mothercraft Society brought into the Podniewicz case by the Catholic Children's Aid Society. Martha McKay, an infant therapist with the Canadian Mothercraft Society, worked with the family. Her first visit with the family was four months before Sara's birth.

During her involvement, she never once went upstairs to see where the children lived. Martha McKay never inquired about Mikey or his whereabouts. In an April 26, 1996 *Toronto Sun* article, Christie Blatchford reported that, during testimony, McKay referred to herself as:

'a supportive, non-authoritarian person from the community' there to offer help for the family.

This echoes Judge Thomas Gove who noted in his report on the death of Matthew Vaudreuil in British Columbia that the problem is that helping agencies and the child protection services are not child-centred enough and sometimes confuse the best interests of parents, usually mothers, with the best interests of the child. In his report's conclusions, Judge Gove stated that in Matthew Vaudreuil's case many of the decisions made were:

...based on social workers' self-interest, Verna Vaudreuil's interest or the ministry's interest, rather than Matthew's interest. If those decisions had been child-centered, it is likely that Matthew would have been taken into care, either by apprehension or by agreement.

The trial of Olsen and Podniewicz was most disturbing. It drew attention to the unspoken fact which is the state's financial subsidization of their pathologies and privations and a congealing of inadequacies. It also drew attention to the compounding of errors within the helping agencies and government agencies including child protection services, family support agencies, welfare authorities, and the parole and corrections authorities.

The Senate of Canada should be informed about the National Parole Board and Correction Canada's activities in this case since they are federal bodies.

Honourable senators, all of these agencies work with troubling problems. Their problems and failures are usually better known than their successes. We should be attentive to both.

However, the most telling account of Sara's abuse is that of her older sister. This eight-year-old girl, Jasmine, had been interviewed by police concerning life in the Podniewicz home. On April 3, 1996, a *Toronto Star* article by Gary Oakes entitled "Abuse of Baby Acted Out on Tape Shown to Jurors," reported part of a discussion between the eight-year-old and the police:

The 8-year-old...told police...that she was mad at her dad "cause if he didn't do it, nothing woulda happened."

It grips your heart. You can hear her anger.

Detective Constable Jim Vaughan-Evans asked:

If he didn't do what?

"Never mind," the girl replied, but later added, "If he didn't drop Sara on the head."

It was very interesting that all through her testimony, the little girl would refer to "secrets" that she was not allowed to tell.

The trial judge, Mr. Justice John O'Driscoll, in his instructions to the trial jury, said:

Undoubtedly, these matters have shaken your faith in certain agencies and institutions...but this is not a coroner's inquest, or an employee review, or a hearing to decide whether to fire or promote someone. You're not here to send any messages, or to receive them.

The jury listened. The jury found both Lisa Olsen and Michael Podniewicz guilty of second-degree murder.

Honourable senators, one is impressed by the endurance and fortitude of the many who work on these cases, including persons such as Constables Brian Gill and Robert Guptill of the Toronto Metropolitan Police; paramedic Ian McClelland; Dr. Charles Smith, the pathologist who performed the autopsy; Lesley Baldwin, Crown Attorney; Dr. Jim Cairns, Deputy Coroner for the Province of Ontario; and Dr. James Young, Chief Coroner of the Province of Ontario; and others whose concerns about child homicides have been well articulated. They deserve our respect and support for managing this case and for obtaining the conviction of these two parents.

In addition to the challenges of the investigation, these individuals then face many difficulties in court which may prove to be obstacles and prohibitions to obtaining convictions in such cases. On the witness stand, these professionals, especially the pathologists, are frequently cross-examined by defence lawyers who aggressively seek to destroy the careers, credibility and reputations of witnesses. Many doctors and professionals, essentially scientists, are uneasy under cross-examination because of the unsavoury tactics employed by many defence counsel to destroy their medical evidence. Moreover, the use of expert witnesses by the defence has taken currency in the courts of Canada and has found favour with defence counsel.

I am informed that a particular impediment to justice in these cases is the absence of reciprocal disclosure of these expert witnesses' evidence. This absence of disclosure is an impediment to obtaining convictions. Another factor in these cases is the political self-interests of the varied agencies involved. The agencies' self-interests sometimes take pre-eminence over the interests of justice.

I am informed that the Catholic Children's Aid Society wants this verdict appealed. Obviously, such appeal would delay a coroner's inquest. Honourable senators, I believe a coroner's inquest is critical in this particular case and should be held. If the Catholic Children's Aid Society does not appeal the case, I urge the chief coroner to call an inquest. If the agency does appeal, I encourage Bob Runciman, the Solicitor General of Ontario, to order an inquest immediately.

**The Hon. the Speaker:** Honourable Senator Cools, I regret that your time has expired.

Is leave granted for Senator Cools to complete her remarks?

**Hon. Senators:** Agreed.

**Senator Cools:** Honourable senators, this trial is a milestone because it did not exempt or excuse the mother's role in this crime as so many criminal proceedings do. This trial held both parents, mother and father, responsible and culpable in this death.

If the mother, Lisa Olsen, had been held responsible in Mikey's case, perhaps little Sara's life might have been spared.

**The Hon. the Speaker:** Honourable senators, if no other senator wishes to speak on this inquiry, it is considered debated.

• (1640)

## ADJOURNMENT

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

**Hon. Richard J. Stanbury:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Monday, June 10, 1996, at 8 p.m.

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

**Hon. Senators:** Agreed.

Motion agreed to.

## CAPE BRETON DEVELOPMENT CORPORATION

### MOTION TO EXTEND DATE OF FINAL REPORT OF SPECIAL COMMITTEE

**Hon. Richard J. Stanbury (Acting Deputy Leader of the Government),** for Senator Rompkey, pursuant to notice of Tuesday, June 4, 1996, moved:

That notwithstanding the Order of the Senate adopted on April 25, 1996, the Special Committee of the Senate on the Cape Breton Development Corporation be authorized to present its final report no later than June 18, 1996, and that the Committee retain all powers necessary to disseminate and publicize its final report until June 30, 1996.

Motion agreed to.



**FISHERIES**

## COMMITTEE AUTHORIZED TO ENGAGE SERVICES

**Hon. Noël A. Kinsella**, for Senator Comeau, pursuant to notice of Wednesday, June 5, 1996, moved:

That the Standing Senate Committee on Fisheries, have the power to engage the services of such counsel and

technical, clerical, and other personnel as may be necessary for the purpose of its examination and consideration of such bills, subject-matter of bills, and other matters relating to fisheries generally as are referred to it.

Motion agreed to.

The Senate adjourned until Monday, June 10, 1996, at 8:00 p.m.

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**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(2nd Session, 35th Parliament)**  
**Thursday, June 6, 1996**

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

<b>No.</b>	<b>Title</b>	<b>1st</b>	<b>2nd</b>	<b>Committee</b>	<b>Report</b>	<b>Amend.</b>	<b>3rd</b>	<b>R.A.</b>	<b>Chap.</b>
C-2	An Act to amend the Judges Act	96/03/19	96/03/20	Legal & Constitutional Affairs	96/03/21	none	96/03/26	96/03/28	2/96
C-3	An Act to amend the Canada Labour Code (nuclear undertakings) and to make a related amendment to another Act	96/03/27	96/03/28	Social Affairs, Science & Technology	96/05/01	none	96/05/08 referred back to Committee 96/05/16	96/05/29	12/96
C-7	An Act to establish the Department of Public Works and Government Services and to amend and repeal certain Acts	96/03/27	96/03/28	National Finance	96/05/14	none			
C-8	An Act respecting the control of certain drugs, their precursors and other substances and to amend certain other Acts and repeal the Narcotic Control Act in consequence thereof	96/03/19	96/03/21	Legal & Constitutional Affairs					
C-9	An Act respecting the Law Commission of Canada	96/03/28	96/04/23	Legal & Constitutional Affairs	96/05/09	none	96/05/14	96/05/29	9/96
C-10	An Act to provide borrowing authority for the fiscal year beginning on April 1, 1996	96/03/26	96/03/27	National Finance	96/03/28	none	96/03/28	96/03/28	3/96
C-11	An Act to establish the Department of Human Resources Development and to amend and repeal certain related Acts	96/04/24	96/04/30	Social Affairs, Science & Technology	96/05/15	none	96/05/16	96/05/29	11/96
C-12	An Act respecting employment insurance in Canada	96/05/14	96/05/30	Social Affairs, Science & Technology					
C-13	An Act to provide for the establishment and operation of a program to enable certain persons to receive protection in relation to certain inquiries, investigations or prosecutions	96/04/23	96/04/30	Legal & Constitutional Affairs	96/05/28	one	96/05/30		
C-14	An Act to continue the National Transportation Agency as the Canadian Transportation Agency, to consolidate and revise the National Transportation Act, 1987 and the Railway Act and to amend or repeal other Acts as a consequence	96/03/27	96/03/28	Transport & Communications	96/05/08	none	96/05/16	96/05/29	10/96
C-15	An Act to amend, enact and repeal certain laws relating to financial institutions	96/04/24	96/04/30	Banking, Trade & Commerce	96/05/01	none	96/05/02	96/05/29	6/96

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-16	An Act to amend the Contraventions Act and to make consequential amendments to other Acts	96/04/23	96/04/25	Legal & Constitutional Affairs	96/05/02	none	96/05/08	96/05/29	7/96
C-18	An Act to establish the Department of Health and to amend and repeal certain Acts	96/04/24	96/04/30	Social Affairs, Science & Technology	96/05/08	none	96/05/09	96/05/29	8/96
C-19	An Act to implement the Agreement on Internal Trade	96/05/14	96/05/30	Banking, Trade & Commerce					
C-20	An Act respecting the commercialization of civil air navigation services	96/06/05							
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 1996	96/03/21	96/03/26	--	--	--	96/03/27	96/03/28	4/96
C-22	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 1997	96/03/21	96/03/26	--	--	--	96/03/27	96/03/28	5/96
C-28	An Act respecting certain agreements concerning the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport	96/04/23	96/05/30	Legal & Constitutional Affairs					
C-31	An Act to implement certain provisions of the budget tabled in Parliament on March 6, 1996	96/05/28	96/05/30	National Finance					
C-33	An Act to amend the Canadian Human Rights Act	96/05/14	96/05/16	Legal & Constitutional Affairs	96/05/28	none	96/06/05		

## COMMONS' PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-243	An Act to amend the Canada Elections Act (reimbursement of election expenses)	96/05/16	96/05/28	Legal & Constitutional Affairs					
C-275	An Act to establish the Canadian Association of Former Parliamentarians	96/04/30	96/05/14	Legal & Constitutional Affairs	96/05/16	three	96/05/16	96/05/29	13/96

SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-2	An Act to amend the Canadian Human Rights Act (sexual orientation) (Sen. Kinsella)	96/02/28	96/03/26	Legal & Constitutional Affairs	96/04/23	none	96/04/24		
S-3	An Act to amend the Criminal Code (plea bargaining) (Sen. Cools)	96/02/28	96/05/02	Legal & Constitutional Affairs					
S-4	An Act to amend the Criminal Code (abuse of process) (Sen. Cools)	96/02/28							
S-5	An Act to restrict the manufacture, sale, importation and labelling of tobacco products (Sen. Haidasz, P.C.)	96/03/19	96/03/21	Social Affairs, Science & Technology					
S-6	An Act to amend the Criminal Code (period of ineligibility for parole) (Sen. Cools)	96/03/26							

PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-7	An Act to dissolve the Nipissing and James Bay Railway Company (Sen. Kelleher, P.C.)	96/05/02	96/05/08	Transport & Communications	96/05/15	none	96/05/16		
S-8	An Act respecting Queen's University at Kingston (Sen. Murray, P.C.)	96/06/06							

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