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

## Tuesday, October 1, 1996

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**THE HONOURABLE GILDAS L. MOLGAT**
**SPEAKER**

This issue contains the latest listing of Officers of the Senate, the Ministry, Senators and Members of the Senate and Joint Committees.

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# THE SENATE

**Tuesday, October 1, 1996**

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

Prayers.

### VISITORS IN THE GALLERY

DELEGATION OF SOUTH AFRICAN PARLIAMENTARIANS

**The Hon. the Speaker:** Honourable senators, I should like to draw your attention to the presence in the gallery of a delegation from the Parliament of the Republic of South Africa. In the delegation are members from both houses, the Senate and the National Assembly, who represent seven different parties. We are pleased to welcome them here to the Senate gallery this afternoon.

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

## SENATOR'S STATEMENT

### UNITED NATIONS

SIXTH ANNIVERSARY OF WORLD SUMMIT ON CHILDREN

**Hon. Landon Pearson:** Honourable senators, yesterday marked the sixth anniversary of the World Summit on Children.

On September 30, 1990, 71 heads of state and government, and senior representatives from 88 other countries gathered at the United Nations to sign a Declaration and Plan of Action for the well-being of the world's children.

The plan of action listed a series of specific goals to be attained by the year 2000. These goals include the immunization of 90 per cent of the world's children, the eradication of polio, the reduction of the under-five mortality rate to 70 per thousand, universal access to primary education and universal access to safe water, as well as the ratification of the United Nations Convention on the Rights of the Child by all state members.

Six years later, more than 100 of the developing nations of the world are making measurable progress toward these goals. Malnutrition has been reduced; some 100 countries have reached 80 per cent immunization; large areas of the world are free of polio; iodine deficiency disorders and vitamin A deficiency are being overcome; the use of oral rehydration therapy is rising, preventing more than 1 million child deaths per year; the proportion of children in primary school has risen from less than one-half to more than three-quarters, and 187 out of 193 countries have ratified or signed the Convention on the Rights of the Child.

Canada contributes to this progress through the Canadian International Development Agency by spending $1.8 million per day on programs that directly or indirectly affect children. In over two years, CIDA has spent more than $5.8 million, to control iodine deficiency disease, the single greatest cause of mental deficiency in the world primarily in Eritrea, Ghana and Senegal, countries with large salt works. UNICEF estimates that, in 1995 alone, Canadian aid saved over 3 million children from mental impairment. CIDA money has also been used to assist traumatized and unaccompanied refugee children in Rwanda.

Last February, in the Speech from the Throne, the Liberal government made children's rights a Canadian priority. In celebrating the anniversary of the World Summit for Children, we are reminded that, by working together toward common measurable goals, the nations of the world can improve the well-being of the world's children.

There is so much that remains to be done. Tragically, children continue to be caught in the sex trade, exploited for their labour, wounded by violence and deprived of education, especially girls. However, the message remains clear: If we want to, we can make a difference.

## ROUTINE PROCEEDINGS

### PRIVACY COMMISSIONER

ANNUAL REPORT TABLED

**The Hon. the Speaker:** Honourable senators, I have the honour to table the annual report of the Privacy Commissioner for the period ended March 31, 1996.

### ADJOURNMENT

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

> That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, October 2, 1996, at one thirty o'clock in the afternoon.

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

**Hon. Senators:** Agreed.

Motion agreed to.

## CANADIAN NATO PARLIAMENTARY ASSOCIATION

REPORT OF CANADIAN DELEGATION TO MEETING IN BRUSSELS TABLED

**Hon. Bill Rompkey:** Honourable senators, I have the honour to table the third report of the delegation from the Canadian NATO Parliamentary Association which represented Canada at the joint meeting of the North Atlantic Assembly Defence and Security, Economic and Political Committees, held in Brussels, Belgium, on February 18-19, 1996.

• (1410)

## CANADA-JAPAN INTER-PARLIAMENTARY GROUP

REPORT OF SEVENTH ANNUAL MEETING AND REPORT OF EXECUTIVE COMMITTEE MEETING OF ASIA-PACIFIC PARLIAMENTARY FORUM TABLED

**Hon. Dan Hays:** Honourable senators, I have the honour to present, in both official languages, the report of the Canadian delegation to the seventh annual meeting of the Canada-Japan Interparliamentary Group which was held in Toronto, Montreal and Ottawa from September 1 to 5, 1996, as well as the report of the executive committee meeting of the Asia-Pacific Parliamentary Forum held in Ottawa from September 6 to 8, 1996.

The Asia-Pacific region is becoming increasingly important to Canada. Japan is now our second largest trading partner and Asia has become Canada's second most important trading region. Honourable senators, the recently completed seventh annual Canada-Japan meeting focused on our growing and harmonious bilateral relationship. Discussions focused on bilateral and multilateral cooperation in a rapidly changing world. Relations with our other Asia-Pacific neighbours are also changing.

Canada will be hosting the fifth annual meeting of the Asia-Pacific Parliamentary Forum in January in Vancouver. The executive committee meeting of the APPF held recently approved the arrangements for the Vancouver meeting. The association looks forward to hosting this meeting and launching Canada's year of the Asia-Pacific region.

[*Translation*]

## TRANSPORT AND COMMUNICATIONS

STATE OF TRANSPORTATION SAFETY AND SECURITY—NOTICE OF MOTION TO PERMIT COMMITTEE TO STUDY AND REPORT UPON TECHNICAL, LEGAL AND REGULATORY ISSUES

**Hon. Lise Bacon:** Honourable senators, I give notice that on Wednesday next, October 2, 1996, I will move:

> That the Standing Senate Committee on Transport and Communications be authorized to examine and make recommendations upon the state of transportation safety and security in Canada and to complete a comparative review of technical issues and legal and regulatory structures with a view to ensuring that transportation safety and security in Canada are of such high quality as to meet the needs of Canada and Canadians in the twenty-first century;
>
> That the Committee be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings; and
>
> That the Committee present its final report no later than December 31, 1997.

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[*English*]

# QUESTION PERIOD

## NATIONAL UNITY

REFERRAL TO SUPREME COURT OF CANADA—RECENT STATEMENTS BY MINISTER OF JUSTICE—GOVERNMENT POSITION

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, my question arises from the decision of the federal government to refer certain constitutional questions to the Supreme Court of Canada. I do not intend to get into an argument on the appropriateness of such an action. It is to be hoped that we will have a chance to debate that matter on another occasion.

However, I do want to ask the Leader of the Government in the Senate for clarification of two statements made by the Minister of Justice as he was advising the House of Commons of his decision concerning that reference.

The Minister of Justice said:

> The leading political figures of all our provinces and the Canadian public have long agreed that the country will not be held together against the clear will of Quebecers. This government agrees with that statement.

This is not a throw-away phrase. It has obviously been well thought out before becoming government policy. I would like to know exactly what is meant by "the clear will of Quebecers."

**Hon. Joyce Fairbairn (Leader of the Government):** Honourable senators, I must seek a precise response from the Minister of Justice on the remarks. I will do so as quickly as I can.

**Senator Lynch-Staunton:** Honourable senators, this is government policy. I find it difficult to accept that the minister responsible for explaining government policy in this chamber can only give us, "I will seek more information" on something so essential as the future of this country.

In any event, I would ask for a more definite explanation of another statement made by the Minister of Justice at the same time:

> We said, if there is to be another referendum, that the process must be democratic and that we would ensure that the question is clear.

The obvious question is: What participation does the federal government anticipate for itself in the preparation of the question which would be asked of Quebecers on the future of their province as part — or not as part — of this country?

**Senator Fairbairn:** Honourable senators, the answer to my honourable friend's question lies in the action taken by the federal government. The Minister of Justice has indicated that he would seek advice from the Supreme Court of Canada. The Minister of Justice, on his own behalf as well as on behalf of the government, is seeking clarity from the court. In the process of doing so, it is hoped that a clear indication will be given to Canadians generally that the future of their country must be decided with some involvement of their own, based on a question in any future referendum that would clearly state the intentions of the Government of Quebec.

My honourable friend is quoting from the minister's statement of that day. He must also know, by way of the minister's comments both then and subsequently, that the priority of the government continues to be the creation of a system of renewal across this country which will make the conversation we are having here today unnecessary. There will then be no third referendum.

**Senator Lynch-Staunton:** That is one of the most presumptuous statements I have heard yet by any minister of any government, as if the Government of Canada could suddenly shut down the right of any province to hold a referendum.

**Senator Fairbairn:** That is not at all what I said.

**Senator Lynch-Staunton:** Perhaps you would like to clarify what you said?

**Senator Fairbairn:** I certainly would. That is absolutely not what I was intending to say. We will both read the blues, and if I was that obtuse, then I will correct myself.

The priority of the Government of Canada is to fulfil the promises made during the campaign leading up to the referendum, and confirmed in the most recent Throne Speech, to do positive things in this country which are of benefit to all citizens, including those in the province of Quebec, so that their desire will be to remain in Canada.

This can only be done collectively; it cannot be done by the federal government alone. I am simply saying to my honourable friend that we have a commitment, this Parliament has a commitment, to keep our country together through our actions. This is precisely the intent of the Minister of Justice, and the Prime Minister, and others who deal daily with these matters.

I do not suggest in any way, nor would the Minister of Justice ever suggest, an intrusion into democratic rights.

• (1420)

He said that quite clearly. I am saying that we have a responsibility to conduct ourselves, through our policies and our actions across this country, in a way that will make it evident to people in Quebec and elsewhere that the most beneficial thing for Canada and the unity of this country is, obviously, to stay together, and under those circumstances, I hope we can eliminate the desire for a third referendum.

That is the point I wish to make, Senator Lynch-Staunton, certainly not in the sense of being at all presumptuous, but rather in the sense of optimism. I hope that our actions as a Parliament, as government and as people across this country will be such that the people of Quebec will find themselves at home in Canada and with a desire to so remain.

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

**Senator Lynch-Staunton:** Honourable senators, I would have applauded, too, had the Minister of Justice said exactly those words. However, what the Minister of Justice has said is, "I expect there will be another referendum, and because I expect there will be another referendum, I am going to the Supreme Court because, not only do I expect another referendum, but I expect there will be a vote in favour of separation. Therefore, I need direction from the Supreme Court as to how that decision should be handled."

This government has abandoned its fundamental historical responsibility of trying to keep this country together, and it is telling the Canadian public, "Let's get ready for separation." Not only is it saying, "Let's get ready for separation," it is also telling Quebecers at the next referendum, which the Government of Canada has accepted will take place some time in the future, "We will decide the question." That is my question to the minister, and I am not asking for pious platitudes about keeping this country together.

How could the Minister of Justice say to the House of Commons on September 27:

> We made clear yesterday that we must respect a decisive majority on a clear question on that issue as expressed by the population of Quebec.

Right then and there he says that there will be another referendum and whatever the result, we will thus abide. He goes on to say:

> The question will be separation or not, nothing in between, not partnership or any such thing. Separation or not is the clear and honest question that must be asked.

We all agree with that. However, how can the Government of Canada substitute itself for the National Assembly and, by this statement, attempt to dictate the question to Quebecers?

**Senator Fairbairn:** Honourable senators, first, there is nothing pious in the wish that this country stay together. I do not question the honourable senator's intense feelings for that result, nor do I wish the government or anyone else in this house to have their own intense feelings for a united and independent Canada questioned as being pious or in any way insincere.

The Minister of Justice is not doing any of the things that my honourable friend is suggesting. He is not saying, "Yes, there will be another referendum. This is what will be done and we will get in there and supplant the National Assembly of the province of Quebec." He is not saying that at all.

Over the past year, we have lived intensively with the issue of the unity of this country. A number of questions have arisen, some during the referendum and some subsequently, questions to which everyone is seeking answers, not just Canadians within the province of Quebec but Canadians in other provinces who also feel that they have a role to play. These people want to respond as persuasively as they can, not undemocratically or dictatorially, but as persuasively as they can to keep Quebec within this family. That is the purpose of seeking clarity from the Supreme Court of Canada.

The absolute priority of this government is to conduct its activities, policies, programs and feelings towards the province of Quebec and the citizens of Canada who live there in such a way that there will be no groundswell of desire for a third referendum. In no way is this government accepting a referendum as inevitable.

REFERRAL TO SUPREME COURT OF CANADA—
IMPLICATIONS OF OPINIONS—GOVERNMENT POSITION

**Hon. Noël A. Kinsella:** Honourable senators, I have a supplementary question. Would the Leader of the Government clarify for us, once it receives the ruling of the Supreme Court of Canada, what is the policy of the Government of Canada to implement that decision?

**Hon. Joyce Fairbairn (Leader of the Government):** Honourable senators, we have sought from the Supreme Court its views on three questions, and we will certainly await its views before commenting on the questions that my honourable friends are asking. We will await the views of the Supreme Court, as will people across the country. Those are questions to which people would obviously like to have answers.

**Senator Lynch-Staunton:** We will give you the answers now if you want.

**Senator Fairbairn:** Senator Lynch-Staunton, that would be very useful, I am sure. I am also sure that your views would be listened to with great respect.

At the same time, the federal government of this country has the right to seek advice from the Supreme Court of Canada, and that is precisely what it is doing.

**Senator Kinsella:** Is the minister telling this house that there is no policy basis for the interpretation or guidance the government receives from the Supreme Court of Canada? The numbers of possibilities are not infinite. Surely, a government that is concerned with the integrity of this country has some contingency plans for all of the options that could flow from the decision rendered by the Supreme Court.

Would the minister also reflect for a moment on the following: In recent history, how many countries around the world that have separated have given very much value or importance to decisions of institutions of the country from which they have separated?

**Senator Fairbairn:** To my honourable friend, with the greatest respect for both his question and his background, I have absolutely no intention of engaging in a dialogue on what will happen to Canada after the Supreme Court gives its ruling or after a referendum any more than I do on what the views of a separate Quebec might be.

The priority of this government is to do everything humanly possible to ensure that that situation does not occur. It is seeking all of the information that it can to make reasoned and sensitive decisions. The government is not standing before this country and saying, "There is going to be a referendum." It is standing before this country and saying, "We wish to have this information, and we will conduct ourselves in such a way that Canadians within Quebec will wish to remain within Canada."

[*Translation*]

QUEBEC'S PLACE IN CONFEDERATION—
GOVERNMENT POSITION

**Hon. Jean-Claude Rivest:** Honourable senators, what exactly is the Leader of the Government talking about? During the last referendum, 50 per cent of Quebecers, 60 per cent of francophones, made this distinction. Fifty per cent of Quebecers chose to leave Canada.

**Hon. Jacques Hébert:** Twenty-eight per cent thought they were staying in Canada though!

**Senator Rivest:** That is where the problem lies. We must convince the 28 per cent referred to by our colleague Senator Hébert. These people are just as intelligent as he is, and understood the question perfectly well, just as he did.

**Senator Hébert:** That is not what the surveys said.

**Senator Rivest:** Since the referendum, that is the question we must answer, convince Quebecers of the value of choosing Canada, particularly those who voted for the YES side in the last referendum. Instead of flirting with partition, language issues, the legality of the process, and the details of secession, all of which are consequences, the way to convince them is to focus on the real cause, which is Quebecers' sense of belonging to the Canadian family, and their desire to do so. When, therefore, will your government define its vision of Quebec's place in Confederation?

I point out to the minister that the Canadian government's policy has divided the federalist forces in Quebec, both within the Liberal Party of Quebec and within the Conservative Party. If you need convincing, you have your own colleague Senator Pietro Rizzuto, who has joined with a group of leaders in the Italian community, most of whom are federalists, and who say that it is not up to the courts but to the people of Quebec to decide their future.

You see the result, regardless of everyone's opinions. You have had the reports. Businessmen have held conferences, academics have published papers. The government has paid no attention. It is playing around with the consequences and the details of secession. We are not yet at the stage of secession. We are at the stage of convincing Quebecers of the value of choosing Canada. Why are you not interested in the real question, which is Quebec's place in Confederation, instead of playing around with the consequences, which will be non-existent, if you sort out your problems.

Are those not a government's primary responsibilities? How many of the Quebecers who voted Yes will vote No in the next referendum because there might be legal or other problems? You will lose them if you do not address the real problems.

One of these real problems is the place of Quebec in Confederation.

[*English*]

• (1430)

**Hon. Joyce Fairbairn (Leader of the Government):** Honourable senators, I agree completely with Senator Rivest. That is precisely what the government is trying to do, and that is precisely what the government and the rest of us should be pursuing. They may seem to be meaningless to some on the other side, but, since very shortly after the referendum was held last year, the government has taken steps to fulfil the promises that the Prime Minister made in that referendum.

**Senator Lynch-Staunton:** No. He said he was going to put it in the Constitution.

**Senator Fairbairn:** He and his ministers have been working — perhaps not in the frenzied way my honourable friend would wish them to be — at trying to renew this federation so that Quebec will have its responsibilities and will be able to conduct its affairs within this country in a way that, as my honourable friend has said, is meaningful and comfortable to that province, as well as to the other provinces of Canada. That is what the leaders of this country are trying to do. Indeed, the Prime Minister has spoken quite forcefully on this matter. Every day in everything it does, the government is trying to work towards the renewal of this federation, which would include a strong and proud province of Quebec.

[*Translation*]

ESTABLISHMENT OF SPECIAL COMMITTEE—GOVERNMENT POSITION

**Hon. Marcel Prud'homme:** Honourable senators, in this passionate and most interesting debate, everyone seems to be in good faith. Everyone wants to save Canada, to discuss the place of Quebec, my Quebec, the place of the French-Canadian people within Canada.

Could the minister tells us whether, under the circumstances, she might not contemplate asking her colleagues to consider Motion No. 22 in the name of Senator Beaudoin, as it stands on the Order Paper? Why this persistence in not giving the Senate the mandate so well expressed by Senators Beaudoin and Lynch-Staunton?

Is the minister in favour of doing so, or is she not, she and her colleagues, she and the Cabinet, she and the Liberal caucus, whom I know so well, and of whom I could talk at such length? Will she allow a special Senate committee to be appointed to examine and report on the issue of national unity, specifically on the recognition of Quebec, the amending formula, and the federal spending power in areas of provincial jurisdiction? Why would the Senate not undertake such a study? It is an excellent activity for the Senate.

[*English*]

**Hon. Joyce Fairbairn (Leader of the Government):** Honourable senators, this item is on our Order Paper. It has generated a great deal of interest and discussions on it have taken place. Senators on both sides have varying views, and undoubtedly we will be hearing those views as we debate the item.

## EMPLOYMENT INSURANCE

CHANGES TO SYSTEM BY WAY OF REGULATION—REQUEST FOR DETAILS OF CONSULTATIONS

**Hon. Gerald J. Comeau:** Honourable senators, my question concerns the new employment insurance regulations that were recently tabled by the government. The regulations affect the livelihood of Canada's fishing families, as well as a way of life for entire communities, particularly in Quebec and Atlantic Canada.

As a result of the new regulations, $33 million per year will be cut from fishermen's benefits. However, these regulations were tabled with no parliamentary scrutiny and zero debate. In the regulatory impact analysis statement that accompanied the regulations, the government claimed that it consulted widely. Specifically, it said:

> An information paper outlining the proposed changes to the *Unemployment Insurance Fishermen's Regulations* was widely circulated to fishing associations, unions, fisheries councils, provincial government departments concerned with the fishery, and federal Members of Parliament.
>
> Briefings were to be provided when requested.

Would the minister please provide the details of these consultations, including the list of the organizations that were contacted and the dates when such contacts were made? Would the government also provide us with a copy of the information paper and the particulars of any briefings given on the subject?

**Hon. Joyce Fairbairn (Leader of the Government):** Honourable senators, as Senator Comeau knows, I am pursuing his earlier questions. This question will add detail to the pursuit, but I will try to get that information for him; again, as quickly as I can. It may take a bit of sorting out, but I will add that to what we are already trying to get for him. In fact I think his question today has almost overtaken his earlier questions. However, I will try to respond to the substance of his requests.

**Senator Comeau:** As the minister knows, Thursday is the deadline for parliamentary debate on these changes. According to the legislation, the parliamentary debate on the regulatory changes can only be held in the House of Commons; for some reason the Senate has been excluded. Given the short deadline, I would certainly appreciate having the information as quickly as possible.

**Senator Fairbairn:** Honourable senators, I am conscious of what my honourable friend has said. I would say to him that this house is in no way excluded from debating almost any subject it wishes to debate. If that is the wish of honourable senators, we could proceed with such a debate.

• (1440)

I am conscious of the fact that my honourable friend wishes to receive some of the material that has been circulated, and I will have my office do its very best to get that material to him.

[*Translation*]

CHANGES TO SYSTEM BY WAY OF REGULATION— DIFFERENCE IN TREATMENT OF VARIOUS INDUSTRIES— GOVERNMENT POSITION

**Hon. Jean-Maurice Simard:** Honourable senators, my question also concerns the employment insurance regulations. When Bill C-12 was being considered, it was impossible to find a single Liberal senator to block this bill. Essentially, the bill provided in section 153(4) that a motion to repeal and amend future regulations in the Senate could not be debated.

I would like to point out that in 1992, under the former Conservative government, when we considered the Special Economics Measures Act passed on June 4, 1992, that bill provided for a debate in both Houses to consider adoption of the regulations. However, we might as well give up any hope of having an intelligent debate in the Senate on these regulations.

The minister suggested that we could start a debate under Inquiries. I say this inquiry would be like talking to a wall. The debate would be pointless, since the regulations will come into effect as of next Thursday.

The House of Commons did not act. We were unable to find 30 Liberal members across Canada to ensure this debate would take place, and, even more important, that these inadequate regulations would be amended.

What is the difference between the way bankers and shareholders in the tobacco industry are treated and the way the Liberal government treats fishers? There must be a difference. It is common knowledge on Parliament Hill and across Canada that the government does not want to disturb the banks, which are making considerable profits. We saw again this week that the government does not want to disturb the tobacco companies because of a privileged relationship between certain senators in this house and the tobacco industry and the banks.

How can this government deal differently with fishers who will be penalized and deprived of $33 million next year, especially in Atlantic Canada? What explanation does this government have to give the people of Canada for this double standard, for the fact that it is penalizing the fishers of Atlantic Canada —

**The Hon. the Speaker:** Honourable senators, could Senator Simard please ask his question?

**Senator Simard:** — while the government lets the banks and the tobacco industry do what they like?

**Hon. Jean-Robert Gauthier:** Do not bother to ask; he does not have a question.

[*English*]

**The Hon. the Speaker:** Honourable senators, I must inform the Senate that once the Honourable Senator Fairbairn has replied, the time for Question Period has expired.

**Hon. Joyce Fairbairn (Leader of the Government):** Honourable senators, I will not get into a discussion with my honourable friend on a question of the comparison of the situation of bankers and tobacco companies in this country and that of the fishers. There is no question that the government has taken great care in a very difficult and, it is to be hoped in the long term, effecting progressive change in our employment insurance system. The fishers in this country have been treated with respect and concern by the ministers who have been most involved.

Obviously, the conclusions that the government has reached in this matter have not been supported by my honourable friend opposite — and this goes back many months. However, it will be the pledge of this government, and indeed, it has already been the effort of this government, to work as closely as it can with the fishers of Canada on both coasts to ensure that they have the best possible access to these benefits.

[*Translation*]

**Senator Simard:** Honourable senators, I would like to—

**The Hon. the Speaker:** I am sorry, honourable senators, it is already five minutes past the time set aside for Question Period.

**Senator Simard:** I appeal to the authority of the Chair.

**The Hon. the Speaker:** Senator Simard, sit down. When the Speaker rises, you are supposed to sit down. Sit down, Senator Simard.

**Senator Simard:** We know what side you are on.

**Senator Gauthier:** You have no respect for the Chair.

[*English*]

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. B. Alasdair Graham (Deputy Leader of the Government):** Honourable senators, I have a response to a question raised in the Senate on March 20, 1996, by the Honourable Senator St. Germain regarding child support proposals.

### THE BUDGET

CHILD SUPPORT—CHANGES TO GUIDELINES—PURPORTED IMPROVEMENT IN FINANCIAL SITUATIONS OF AFFECTED FAMILIES—REQUEST FOR STATISTICS

*(Response to question raised by Hon. Gerry St. Germain on March 20, 1996)*

The tax changes are only one part of a comprehensive package of reforms. The new tax rules go hand-in-hand with new child support guidelines, an enriched Working Income Supplement to the Child Tax Benefit, and new enforcement tools.

The government compared the results of the new tax rules, the guidelines, and the enriched Working Income Supplement to a sample of 1992 awards from across Canada, and found that in more than 85% of cases, custodial parents and their children would be in a better financial position with the new package. Only the basic schedule amounts were used in this comparison. If the additional amounts that would be available for day-care, health expenses, educational expenses and extracurricular expenses were considered, the results would have been better yet.

However, these higher support awards will still only help children if they are paid. That is exactly what the enforcement measures aim to do. This package as a whole will increase the amount of support going to custodial parents and their children.

Regarding the applicability of the new proposals compared to the current system for low-income custodial parents, two points should be made. Firstly, while the current tax system offers a benefit to the support payer, in practice, the child only benefits from the tax break if the support award is high enough to provide more than enough to meet the children's needs plus cover the taxes which the custodial parent must pay on the support. In practice, the custodial parent is often short-changed in separation negotiations. If the award does not cover her/his full tax costs, then the taxes have to be paid out of the money meant to meet the children's needs. In practice, therefore, the theoretical benefit does not always help children.

Secondly, the tax changes are only one part of a comprehensive package of reforms. The new tax rules go hand-in-hand with new child support guidelines, an enriched Working Income Supplement to the Child Tax Benefit, and new enforcement tools. The impact of the child support strategy has to be evaluated as a whole.

This package of reforms will provide low-income families with a much greater degree of assistance, and will deliver this assistance in a much more targeted and effective way.

The Department of Finance has estimated the tax revenue gains that will result from the tax change at about $200 million in the first three years. In the same three years, the enriched Working Income Supplement will put $565 million more in the hands of low-income working families. Once the enriched Working Income Supplement is fully-implemented, in July 1998, it will deliver $250 million in additional benefits to low-income working families every year.

The government also has re-allocated from other government spending to finance implementation costs of $96 million for the guidelines and enforcement components of this project over the next five years. That figure includes $68 million to assist the provinces to deal with the transition to a new system and beef up their enforcement systems. Better enforcement and more efficient systems to administer support cases directly benefit separated parents and their children as well.

Clearly, the government's investment in this project, for the benefit of children, far exceeds any revenue gains that may result from the change in tax policy.

STATISTICS ON ORDER PAPER QUESTIONS WITH ANSWERS PENDING—REQUEST FOR UPDATE

**Hon. Eric Arthur Berntson (Deputy Leader of the Opposition):** Honourable senators, perhaps I might say to my honourable friend opposite that while we appreciate receiving the delayed answer today to a question going back to March of 1996, there are a significant number of questions on the Order Paper going back to March, April and May. When can we expect replies or responses to those questions?

**Hon. B. Alasdair Graham (Deputy Leader of the Government):** Honourable senators, as the Deputy Leader of the Opposition knows, we are working assiduously and daily on attempting to reply to all of the questions asked by honourable senators opposite. I will attempt to bring him personally a full report tomorrow on where we stand.

### NATIONAL DEFENCE

SEARCH AND RESCUE HELICOPTER REPLACEMENT PROGRAM—REQUEST FOR ANSWERS TO ORDER PAPER QUESTIONS

**Hon. J. Michael Forrestall:** Honourable senators, on a point of order and in pursuit of due diligence, I wonder if the government leader would give some consideration to the questions that are outstanding on the Order Paper with respect to the replacement of helicopters, given the difficulties we have experienced this summer and are continuing to experience? It has been over a year now since these questions have been on the Order Paper.

**Senator Graham:** Yes, honourable senators, that particular question will be given a priority.

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• (1450)

## ORDERS OF THE DAY

### APPROPRIATION BILL NO. 2, 1996-97

THIRD READING

**Hon. B. Alasdair Graham, Deputy Leader of the Government,** moved the third reading of Bill C-56, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 1997.

Motion agreed to and bill read third time and passed.

### JUDGES ACT

BILL TO AMEND—SECOND READING—POINT OF ORDER—DEBATE ADJOURNED TO AWAIT RULING OF SPEAKER

On the Order:

> Resuming the debate on the motion of the Honourable Senator Bryden, seconded by the Honourable Senator Roux, for the second reading of Bill C-42, to amend the Judges Act and to make consequential amendments to another Act.

**Hon. Anne C. Cools:** Honourable senators, I rise to speak on the second reading debate of Bill C-42, to amend the Judges Act and to make consequential amendments to another act. This bill advances entirely new propositions that are inconsistent with, and contrary to, the propositions in the Judges Act, which it amends. Bill C-42 negatives the policy in the Judges Act, which public policy has been repeatedly approved by Parliament and the electorate, and it also negatives and is contrary to the Constitution Act, 1867, sections 99 and 100.

Honourable senators, Bill C-42 is a pretender. First, it pretends to be an ordinary statute. It is not; it is a constitutional amendment. It amends the Constitution Act, 1867, sections 99 and 100, by Parliament alone, without the other constitutional enactors. Second, Bill C-42 pretends to be a simple, technical amendment to the Judges Act. It is not. It enacts an entirely new proposition, which would defeat the most vital sections of the Judges Act. It even employs a notwithstanding clause to vitiate those sections. Third, Bill C-42 would amend and diminish the constitutional role of the Governor General of Canada in the matter of the removal of judges from the bench. Finally, Bill C-42 pretends to be a public bill when, in fact, it is also a private bill advancing the personal interests of certain judges.

Bill C-42, honourable senators, is described by justice officials as the Arbour amendment, the Strayer amendment and the Tremblay-Lamer, Lamer amendment.

Honourable senators, Bill C-42 is, first, a constitutional amendment because it proposes to do what the Constitution Act, 1867 and Parliament say must not be done, and would subvert the Constitution and Parliament's intention. The Constitution Act, 1867, section 99(1), states:

> ...the Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons.

Section 100 states:

> The Salaries, Allowances, and Pensions of the Judges of the Superior... Courts... shall be fixed and provided by the Parliament of Canada.

Honourable senators, these two provisions were received directly into our Constitution by the Fathers of Confederation from the United Kingdom's Act of Settlement 1701, Article 7, and gave Parliament a superintending power over judges and the executive in its dealings with judges. Section 100 enacted that Parliament fix and provide judges' salaries so that judges' financial security would not be subjected to arbitrary action by the executive or by ministers of the Crown; and Section 99 intended security of tenure for judges by vesting in Parliament, and in the Governor General in particular, a superintending power over the executive in the removal of judges from the bench for any reason whatsoever. In other words, there is no such thing as a temporary removal. Bill C-42 proposes the opposite. It proposes the "unfixing" and the "unproviding" of judges' salaries, and the removal of judges for unspecified and indefinite periods, both for arbitrary and subjective reasons.

Honourable senators, judicial independence is a constitutional convention made by politicians in which we parliamentarians have included Parliament's superintendence over these two issues of judges' financial security and security of tenure. Canada's Parliament, Canada's Constitution and this political convention have diligently protected judges from arbitrariness in these two areas. Bill C-42's new propositions are repugnant to the Constitution of Canada, to Parliament, and to the Judges Act.

Honourable senators, my second point is that Bill C-42 is no simple, technical amendment to the Judges Act. It negatives the statutory provisions that it claims to amend, and nullifies and defeats its parent statute. An established principle of Parliament holds that an amendment may not defeat that which it amends. A defeat must be a clear opinion of Parliament, either by repeal or by direct, unambiguous vote. Beauchesne's paragraph 578(1), 6th Edition, states:

> An amendment proposing a direct negative, though it may be covered up by verbiage, is out of order.

In 1920, the other place, in rejecting a Senate amendment, on motion of Minister Newton Rowell adopted the following:

> That such amendment is inconsistent ... and is subversive of the policy ... which has been repeatedly approved by the Parliament of Canada and by the electorate.

Bill C-42's clause 5 grants unprecedented power to the Minister of Justice and to the chief justices of the courts to stop judges' salaries, and to remove judges from the bench for indefinite times and for unspecified purposes. Since Confederation, Parliament has endeavoured to place the stoppage of judges' salaries and the removal or absence of judges from the bench beyond the reach of ministerial arbitrariness, even in cases of judicial misconduct, by keeping these two aspects tightly within Parliament's direct supervision. Parliament, while fixing and providing these excellent salaries for judges, has legislated that these "section 96" judges owe their undivided allegiance and attention to judicial duties and offices. It has taken Parliament 130 years to put all of those elements and concerns into position.

By law, judges may have no other occupations and receive no other emolument than that fixed and provided by Parliament. Parliament protected judges from indignity, corruption, bribery, influence, and other financial and political temptations by charging these excellent salaries to the Consolidated Revenue Fund, and by requiring that the Government of Canada be their singular paymasters.

I feel quite strongly about some of these issues, honourable senators.

The corresponding provisions of the Judges Act include section 54, restricting judges' leaves of absence from the bench; section 55, regarding exclusivity of judicial duty as an occupation; section 56, limiting judges' employment solely to activities within the "legislative authority of Parliament" – which Madam Justice Arbour's activities are not — and section 57, forbidding extra remuneration. Parliament's principle was that a protected judiciary is a guarantee of liberty and freedom for the public. Bill C-42 negatives the Judges Act that it amends, and is inimical to it.

Honourable senators, Bill C-42 confirms the recent deliberate trend of power concentration in the offices of the chief justices. This power concentration worries many judges. Mr. Justice David Marshall of Ontario said:

> Every increase in power to a Chief Judge over others might be seen as a threat to judicial independence.

Further, Mr. Justice John Bouck of British Columbia said:

> They are accountable to no one ...

Judge Timothy Daley of Nova Scotia stated:

> The opportunities for interference exist because of the unique nature of the chief judge's administrative authority and investigative, disciplinary and supervisory duties.

The impact of the enhanced roles of chief justices on the judiciary and the judicial system of Canada requires Parliament's consideration and scrutiny.

Honourable senators, my third point is that Bill C-42 amends the Governor General's role. This bill's new, contrary propositions assail the constitutional role of the Governor General in the removal of judges from the bench. Section 99 of the Constitution Act, 1867 enacted this role and contemplates no temporary removals from the bench. Any removal, whether for a few months, a few years, or many years, engages section 99 and the Governor General of Canada. The condition of judicial appointment "during good behaviour" expressly intends absolutely no abandonment of judicial office. I stress the fact that absolutely no abandonment of judicial office was to be tolerated. Improper or inappropriate, wilful absence from the bench, and neglect of judicial duty are now, and always have been, grounds for sovereign removal from office. In scripting section 99, Sir John A. Macdonald and Lord Carnavon, then Colonial Secretary, considered the constitutional and political developments in the United Kingdom and in pre-Confederation Canada, and also the peculiar judicial problems of the Canadas. This deliberate constitutional act, addressed to the Governor General of Canada, not to Her Majesty in England nor the Governor in Council in Canada, nor the Privy Council in England, created a peculiar Canadian constitutional role for the Governor General. Bill C-42's new propositions undermine this constitutional role.

• (1500)

Honourable senators, in respect of my first three points, Bill C-42's proposed amendments to the Constitution are not in the properly prescribed form, which is a resolution of the Senate, the Commons and the required provincial legislatures. Politically, such resolution would consult Canadians on the suitable occupations and emolument of judges and the conditions thereof. Canadians wanting judicial accountability are concerned about the state of our justice system and receive little comfort from the rhetorical affirmations of judicial independence by both judges and politicians.

Honourable senators, Bill C-42's new propositions amend the Judges Act to remove Canadian judges from the bench to be transported abroad, to be employed by and paid by international organizations to perform non-judicial occupations and international activities, specifically, from Ontario's Court of Appeal, Madam Justice Louise Arbour's well publicized international employment. This bill gives no definition of these activities. On February 29, 1996, Madam Justice Arbour accepted an engagement as a prosecutor for the International Tribunal for the Prosecution of War Criminals in the former Yugoslavia. Evidently, by Bill C-42, another Canadian judge could be hired as defence counsel for the very same war criminals that Madam Justice Arbour would prosecute. The spectacle of two Canadians judges working as hired guns, as prosecuting and defence counsel in a politically and legally controversial tribunal is embarrassing. The old adage, "Once a judge, always a judge," holds that, once ascended to the bench, a judge may never descend to prosecution or defence counsel without first retiring.

Such occupations are inappropriate for a sitting judge of Canada. Honourable senators should contemplate and consider the results if IBM eventually could employ a Canadian judge to participate in its international activities. Judicial office is not available nor amenable to leaves of absence in pursuit of other job opportunities or to any other abandonment for fortune or for fame. If judges on the bench wish to take other business or career opportunities, they must surrender their office to do so. Judicial office is a solemn commission by Royal Letters Patent of persons prepared to accept these appointments in compliance with the legal and constitutional dictates and limitations of judicial office.

Honourable senators, a parliamentary principle holds that judges should not be animated by personal ambition or greed, and should not actuate bills to be placed before Parliament in their personal self-interests. This is an old principle of Parliament. About this, Mr. William MacLean, a member in the other place, said during a famous 1905 debate:

> ...a judge ought not to be looking for promotion to be the subject of special agreements and special legislation in his interest when it is proposed to translate him from one position to another.

Chief Justice James McRuer of the High Court of Ontario, in his 1968 Ontario Royal Commission Inquiry into Civil Rights report, forewarned:

> It would be a corrupting thing for a magistrate or a judge to be in a position in which he could use his judicial office politically to advance his own promotion.

Honourable Senators, as I said, Bill C-42 is not a public bill. It is indeed a private bill. Beauchesne's 6th edition, paragraph 623, reads:

> A public bill relates to matters of public policy while a private bill relates to matters of a particular interest or benefit to a person or persons. A bill containing provisions which are essentially a feature of a private bill cannot be introduced as a public bill.

Madam Justice Arbour's public and forceful pre-emption of Parliament in her highly publicized acceptance of a non-judicial position, knowing that a judge in Canada is so prohibited by law, is pressuring Parliament's judgment — and this senator does not like it. This senator does not like being pressured to vote one way or the other, even by judges. Her overt actions are objectionable. She has transgressed the Judges Act, for which cabinet now seeks our support to get quick passage of this bill.

I am informed that Madam Justice Arbour's United Nations engagement is a private initiative and a private procurement between herself and United Nations Secretary-General Boutros Boutros-Ghali. Further, I am informed that Madam Justice Arbour has been at the United Nations at The Hague in Europe for many months.

**The Hon. the Speaker:** Honourable Senator Cools, I hesitate to interrupt, but your time has expired.

Honourable senators, is leave granted?

**Some Hon. Senators:** Agreed.

**Senator Cools:** Thank you, honourable senators,

As I was saying, I am informed. I have inquired seriously and deeply on every matter of which I am speaking. I am informed that Madam Justice Arbour has already been at the United Nations in The Hague for many months. Obviously, this tells me that my vote in this chamber is of no consequence at all. This is a judge.

I note that Bill C-42 was introduced in the Senate on June 18, 1996, only two days before the Senate adjourned for the summer.

Honourable senators, let us move on to the Barry Strayer amendment. Bill C-42, clause 6, amends the Judges Act, Section 59(1), to increase the membership of the Canadian Judicial Council to add the Federal Court's Mr. Justice Barry Strayer, who is also Chief Justice of the Court Martial Appeal Court. Clause 2(3) grants him an unaccountable hospitality allowance for himself and his spouse thereupon. The Court Martial Appeal Court was originally the Court Martial Appeal Board, headed by a chairman and staffed by judges of the Federal and Superior Courts. The term "chairman" progressed to "president" and then, in 1984, the term "president" progressed to Chief Justice. The effect of this was to award the incumbent with the adornments of chief justiceship.

Honourable senators should be aware that a Court Martial Appeal Court's administrative and infrastructure functions are performed by the Federal Court of Canada. It is not a real court like the Supreme Court or the Federal Court. This is revealed by the fact that, in 1995-96, the 64 Court Martial Appeal judges decided 14 cases. Court martials, few as they are, should be appealable to the Federal Court or the Supreme Court of Canada, as are all federal cases.

On August 2, 1996, in *The Ottawa Citizen*, the Minister of Defence, David Collenette, urged a parliamentary committee examination of the military justice system. It seems precipitate and unwise to amend the Judges Act to upgrade Mr. Justice Strayer at this time, when the minister himself has urged Parliament's reconsideration of military justice and law.

Honourable Senators, let us now examine the Tremblay-Lamer, Lamer amendment. The Judges Act, section 44, prohibits surviving spouses of judges from receipt of more than one annuity. Bill C-42's clause 3 will enable the surviving spouse to receive more than one annuity. I inquired about the number of judges and the number of cases affected by this clause. I was informed that there is only one case and there is only one marriage, and that is the marriage of Chief Justice Antonio Lamer and Madam Justice Danielle Tremblay-Lamer. They were married in 1987, and Madam Tremblay-Lamer was appointed a judge to the Federal Court of Canada on June 16, 1993.

• (1510)

Honourable senators, the Canadian International Development Agency and its judicial involvement under the direction of the Federal Judicial Affairs Commissioner, with the collaboration of the Judicial Council's Chairman, should be examined by Parliament. CIDA's funding of the international forays of Canadian judges, the role of the Judicial Council Chairman, Chief Justice Lamer, and the role of the Federal Judicial Affairs Commissioner, Guy Goulard, in these international initiatives, all raise serious questions about the independence of the judiciary in Canada. The Judges Act intended no foreign affairs or international role for the Judicial Council, its chairman, or the Commissioner of Federal Judicial Affairs. Further, the Judges Act intends no financing of judges by CIDA. The consequences for individual judges and the justice system are serious.

Honourable senators, Bill C-42 is flawed in probity and in form, and is no ordinary bill. It substantially alters the judiciary and constitutional relationships and does not enhance the administration of justice nor the public interest. The framers of the Canadian Constitution understood the mischief to any nation that flows from any provisions that permit control of judges to pass from the hands of Parliament, even to chief justices, and it is our duty to resist this pretender bill's passage. The use in clause 5 of the phrase "authorization of the Government of Canada," not the Governor in Council, suggests bureaucratic and civil service intervention in the use and work of judges. What does the term "Government of Canada" in this clause mean? This bill is defective, and in clause 7 is even retroactive regarding certain payments already made. Mindful that there is no limit to the wisdom or the folly of Parliament, I believe that Bill C-42 is impure. It makes an ally of vagueness, and it demands the attention of all honourable senators. Parliament's interests in the financial security, security of tenure of judges and judicial independence is at risk, as is judicial independence and justice itself.

I have attempted to draw to the attention of honourable senators what I think are extremely serious matters. I plead with senators to study this bill carefully. As I have said before, I am personally very much opposed to it. I am also mindful that many bills pass here, particularly from the Department of Justice, that claim to be simple, technical amendments. Some very practised legislative professionals have learned that the fastest way to invoke relaxation and lack of scrutiny by senators is to describe something as "a technical amendment." As I pointed out, Bill C-42 is no technical amendment.

Finally, I should like to take senators back to a moment in June of 1993 when I sat in opposition. I followed Senator MacEachen as we debated Senator John Stewart's motion on NAFTA. The NAFTA enabling Bill C-115 had a proposal, clause 218, to use judges on dispute settlement panels. I believe that my side was unanimous in opposing that clause. We tried to defeat it, if my memory serves me correctly. The ground on which we stood at the time was that the judiciary of Canada needed protection, and that we should maintain a pure attitude on the use of judges.

I thank honourable senators for their attention.

**Hon. Pierre Claude Nolin:** Honourable senators, Senator Cools alluded to the constitutional question. I wonder whether she has read section 11 of the Charter of Rights and Freedoms, which states:

> Any person charged with an offence has the right
>
> (*d*) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

Has the honourable senator looked into that section of the Charter? Does she have any comment on that? Does she think that Bill C-42 will contravene this specific section of the Charter of Rights and Freedoms?

**Senator Cools:** I thank the honourable senator for his question. Section 11 of the Charter is cited frequently, by judges who lean on that section as modern constitutional proof of their judicial independence.

Fifteen minutes is a short time to expand on these enormous and complex issues, but it is clear that if, as I am saying, Bill C-42 compromises judicial independence in one issue, it comprises judicial independence in every single other issue.

As I said before to honourable senators, judges across this land are watching how we deal with Bill C-42. When any human being in this country walks into a courtroom and stands before a judge for any reason whatsoever, that person deserves the assurance that the individual before whom they stand is beyond the reach of bureaucrats, politicians and chief justices.

To answer the question of the honourable senator directly, yes.

**Hon. David Tkachuk:** Honourable senators, I enjoyed the presentation of Senator Cools. She mentioned a judge whose name I did not catch, who has left Canada on the invitation of Boutros Boutros-Ghali to serve in The Hague this summer. Was that judge paid by the United Nations or one of its agencies, as well as being in receipt of a cheque from the Canadian government?

**Senator Cools:** Honourable senators, Senator Tkachuk's question is best directed to the leadership of my party. However, it is my understanding that the Government of Canada has found a way to accommodate that judge.

**Senator Tkachuk:** Honourable senators, this matter bothers me somewhat. If this bill does not pass, will that judge then be in contravention of the act?

**Senator Kinsella:** She is already in contravention.

**Senator Cools:** I would argue that that judge is already in contravention of the Judges Act.

**Senator Tkachuk:** Is the purpose of this bill to help her not to be in contravention of the act?

**Senator Cools:** Honourable senators, we need to study the 130 years of history that eventually culminated in section 55 as it now stands. Section 55 is clear. It states:

> No judge shall, either directly or indirectly, for himself or others, engage in any occupation or business other than his judicial duties, but every judge shall devote himself exclusively to those judicial duties.

Later exceptions are made for judges to be appointed as royal commissioners or under the Inquiries Act. Section 56(1)(*a*) states:

> ...the judge is by an Act of Parliament expressly authorized so to act...

Therefore it takes an express act of Parliament, or an Order in Council.

• (1520)

Looking at section 56(1)(*b*), it indicates that whenever a judge is doing something slightly different it has to be:

> ...within the legislative authority of Parliament...

Obviously, it is of the Parliament of Canada. The question is whether or not activities in The Hague are within the legislative authority of Canada.

Honourable senators, if one were to track the debates on financial security and payment to judges in past years one would see that it really began in the Act of Settlement. However, it did not really get into motion until many years later, after the creation of the Consolidated Revenue Fund.

One must be mindful that whenever the issue of judges' salaries is raised there is always a plethora of debate. Judges have always insisted that they are not mere civil servants and are not to be treated as ordinary civil servants. In other words, they are appointed under certain commissions and they enjoy a particular place.

Bill C-42 is relegating judges back to being ordinary civil servants who take leaves of absence for two or five years. That is why I say that Bill C-42 is a step backwards. What it is attempting to do, frankly, is to wipe out 130 years of Canadian history.

**Senator Tkachuk:** Honourable senators, if a judge wanted to serve internationally, would that include a corporation, or is it restricted to other governments? For example, could a judge take a leave of absence, go to the United States, and make lots of money working for IBM?

**Senator Cools:** One of the most worrisome aspects of Bill C-42 is the indefiniteness and the vagueness. The articulations of the bill literally make an ally of vagueness. The questions you have posed are not answered in the bill.

**Senator Tkachuk:** Is it an Allan Rock bill?

**Senator Kinsella:** Yes.

**Senator Tkachuk:** I am really interested now.

**Senator Cools:** Clause 5 of the bill is not explicit as to the range of activities for judges.

Clause 5 is a masterful piece of vagary and vagueness. It says:

> The Act is amended by adding to the following after section 56:
>
> 56.1(1) Notwithstanding section 55...

Clause 5 amends sections 55 and then 56. These sections are crystal clear on what the Government of Canada and Parliament have traditionally considered to be fitting and appropriate preoccupations for judges.

Clause 5 is a masterpiece of illusion and elusiveness; basically, it vitiates sections 55 and 56. Section 56.1(1) reads:

> Notwithstanding section 55...

This is a novel creation, "notwithstanding section 55." I predict that, if this bill passes, another technical amendment will come before the chamber that will totally delete section 55. This is the in-between stage. If one tracks the movement of these amendments to legislation, one will see that eventually the total section is obliterated.

The essential issue is that Bill C-42 is vague as to many things. The first thing is who may give the authorization. It states:

> Notwithstanding section 55, a judge may, with the authorization of the Government of Canada...

As I said in my speech, it is unclear as to who the Government of Canada is. That particular vagueness is extremely odious.

It continues:

> ...participate in international activities or international technical assistance programs or in the work of an international organization of states or an institution of such an organization,...

However, the bill does not tell you what are international activities, what are international technical assistance programs, and it does not even tell you what is an international organization of states. For example, let us take the current situation between Israel and Palestine. We could have a situation where a Canadian judge goes to work on behalf of the UN, and then perhaps another Canadian judge could be hired by the United Arab League. They would then be opposing one another.

The honourable senator's specific question relates to whether that provision could mean an international corporation. I do not know. He is posing the very questions that I have posed. I have adopted the position that the vagueness cannot be accidental; it has to be deliberate. It is my duty to oppose it.

I understand that human beings and human nature are limited and will always push boundaries. I have no doubt that, wherever a vacuum exists in this bill, it would automatically be filled.

To answer the honourable senator's question, the bill offends because it is not clear as to what are international activities, what are international organizations and who may go and who may authorize whom. All of that makes me extremely suspicious and extremely concerned.

Honourable senators, I never talk a lot about myself, but I was raised in a colonial society, under the enormous influence of the old British nineteenth century liberals. I consider myself a British nineteenth century liberal. I know how hard they worked over the years to bring protection to the judiciary.

Honourable senators, because of the society from which I come, it makes me nervous to see people tinkering with these important principles and these important aspects of our statutes for what may simply be junkets.

If I sound somewhat passionate about this issue, honourable senators must appreciate why. As far as I am concerned, the judiciary is something we have developed over years. It is an important subject-matter today.

I read this bill and I see what I view to be human frailty and fallibility.

If we are to maintain the judiciary in the tradition in which we envision and conceptualize it, we must open our eyes and look very carefully at this bill. Bill C-42 has many more questionable aspects to it. I have not even mentioned all of them.

As I said to honourable senators, I thank them, and I am pleased because I have been able to raise many of these issues here today. Frankly, I was expecting that I would have to fight hard to give my speech. I thank honourable senators for the interest they have shown.

• (1530)

This subject-matter is so enormous and detailed and complex that it is very difficult for a senator or a member of Parliament to get a handle on some of the issues. I have no doubt that these practised legislative drafters know how difficult it is and deploy that as a technique to avoid scrutiny.

I do a fair amount of public speaking across this country, and the truth of the matter is that citizens know that something is very wrong in the judicial system. They are not exactly sure where or how or what. I believe that we, as members of Parliament, have an obligation to give this matter the attention that it requires and demands.

Finally, I think it sets a bad example to say to the public that judges are not bound by the law. To me, that is the most disturbing aspect of this bill.

Apparently, there was an article in *The Globe and Mail* this morning, Tuesday, October 1, regarding this subject. I only heard about it at lunch time, but I was trying to put together the last bits of my speech, so I have not had time to read it. Because the subject-matter is so difficult, one must be careful. We have little time to speak. Fifteen minutes is not a lot of time, and it requires a lot of work to craft thoughts into a speech in that short a time.

**Hon. C. William Doody:** Honourable senators, I really do not want to interrupt Senator Cools in her oratorical flight. She has quite captured all of us and apparently is quite prepared to do so for quite some time. However, there is a rule in this place that limits speeches to 15 minutes, whereupon leave can be asked for and granted for a continuation from that point, and then there is some time allowed for questions and answers after the speech. If we do not respect some sort of time limitation on this matter, it will get completely out of hand and we will be subjected to interesting, informative, educated, and literate dialogues between various senators which, I am sure, will add to the public debate. However, in the meantime there are other senators waiting to do their things. I count myself humbly among that number, and I ask for some consideration.

I am not as young as I used to be and I am starting to get a bit fatigued. I ask for the indulgence of the younger members of this place to allow this chamber to continue with its business. Perhaps much of what has been discussed here would be more properly discussed in committee. The questions that have been asked and the questions that have been answered at great length are really designed for committee work and not for the chamber.

**The Hon. the Speaker:** Honourable senators, if I may reply to the Honourable Senator Doody, when the 15-minute period for Senator Cools's speech had ended, I rose, she asked for leave, and leave was granted. Under the rules I have no authority to call any further time.

**Senator Doody:** I appreciate that, Your Honour. I am sorry if I gave the wrong impression. It is not the extension of the speaking time with which I have a problem; it is the prolonged question period after the expiration of the extension of the speaking time. There has to be a limit. Perhaps we should talk to the Rules Committee about this matter. Certainly, questions and answers are appropriate at any time after a senator has made a presentation, but we have to have some sort of reasonable limitation on it or the business of the house will deteriorate into, as I said, an interesting, informative, educated dialogue, but that is not the intent.

**Hon. Noël A. Kinsella:** Honourable senators, my question is short, and I am sure the answer can be equally brief. I attempted to make notes as the honourable senator was giving her speech. Did I hear the honourable senator question whether or not this bill is properly before this house? Did I hear the honourable senator say that this bill negatives the Judges Act, and negatives a provision of the Constitution Act? The honourable senator made a suggestion that it was a pretender act, although I could find no such thing in Beauchesne's.

Am I correct, Senator Cools? Did you ask that question?

**Senator Cools:** Yes, you are correct.

**Senator Kinsella:** You questioned whether this is a public bill or private bill. Did you argue that you thought it may be a private bill because, in your judgment, it benefits the number of individuals you named? You cited paragraph 578 of Beauchesne's, which deals with the situation in which a bill vitiates a statute by amending that statute. I believe you cited paragraph 623 of Beauchesne's on the question of whether or not a bill is private or public.

Our rules say at page 2 that bills may be private or public. It seems to me the honourable senator has raised in her speech a number of issues on the principles of the bill that are difficult. That is one issue. However, the issue that has caught my attention — and I hope it has caught the attention of all members of this chamber — is that the honourable senator seems to be raising, without stating it, a very serious point of order. Is it the intention of the honourable senator to raise this issue as a point of order?

**Senator Cools:** I thank the honourable senator for his question.

I will not be too long, Senator Doody.

I followed Senator Kinsella pretty closely and he has repeated what I said quite accurately. Yes, I did raise those issues. I cited Beauchesne's and so forth.

The honourable senator has asked if I intend to raise a point of order. I am not raising a point of order. I was expressing my dissatisfaction with the principles. Within those comments, I also said that the bill was flawed as to form. Yes, I did question whether or not it was properly before us and admissible in this chamber. However, I did not raise a point of order.

POINT OF ORDER

**Hon. Noël A. Kinsella:** Honourable senators, I have the greatest respect for the Chair and the rulings that come from it. I think the matter is serious and that if Senator Cools does not raise it as a point of order, it is the role of the Speaker to help us in providing interpretations as to whether or not this bill is properly before us. There is now a doubt in my mind about whether it is properly before us.

I have two questions that I should like to ask the Speaker to rule on, regarding whether or not this bill is properly before the Senate. First, are we dealing with a public bill or a private bill? Arguments were made on that point and Beauchesne's was cited in the second reading speech of Senator Cools. Second, does this bill, which is an amendment to the Judges Act, impinge upon provisions of the Constitution Act and, therefore, is it out of order? In the alternative, is the bill out of order because it negatives the principal statute, namely the Judges Act? The citation in Beauchesne's is paragraph 578, which I need not read.

I would ask that Your Honour help our assembly by ruling on whether or not this bill, which is now before us, is indeed properly before us or whether it is out of order for the reasons given.

**Senator Cools:** I should like to add —

**The Hon. the Speaker:** Before Honourable Senator Cools proceeds, Honourable Senator Kinsella has risen on a point of order asking the Speaker for a ruling. I will hear honourable senators who wish to speak on that point of order.

**Senator Cools:** I did not expect this situation to arise, honourable senators. However, to the extent that it is now before us, I support Senator Kinsella's point of order. I would ask that my speech in its entirety, that the principles and substance of what I had to say in the last few moments be considered by His Honour in his deliberations upon Senator Kinsella's point of order.

• (1540)

**The Hon. the Speaker:** Are there any other honourable senators who wish to speak to the point of order raised by the Honourable Senator Kinsella?

**Hon. B. Alasdair Graham (Deputy Leader of the Government):** Honourable senators, on the question of the point of order being raised at this particular time, it is my understanding that points of order should be raised at the first opportunity, and a considerable amount of time has elapsed since —

**Senator Berntson:** Since June.

**Senator Graham:** Yes, since the bill was first introduced, which goes back to our last session in June. I would ask Your Honour to take that into consideration. We have been sitting since last week, we are sitting today, and I believe that there was ample time to raise a point of order. I think that that time has passed.

**Hon. Eric Arthur Berntson (Deputy Leader of the Opposition):** Honourable senators, while I do not wish to get into a debate over whether or not the intervention is in order as it relates to when it was raised, if you look closely at the rules you will find that a question of privilege is to be raised at the earliest possible opportunity. A point of order is to be raised when the point of order becomes evident, and it has now become evident.

**Hon. Marcel Prud'homme:** We could have a long debate on the meaning of "first opportunity." Is the first opportunity when someone discovers an error, or is it when someone's attention is called to a certain item? There has always been debate on first opportunity. If I were insulted today and came to the Senate several times thereafter but did not raise the matter, then I think I have missed the first opportunity.

In the case raised by the Honourable Senator Kinsella, I think the first opportunity could well be as he described it. Not to complicate the matter further, but the Chair now has two decisions to make: one on of the point of the Honourable Senator Kinsella and the other on the point of the Honourable Senator Graham. I would think one point is enough for the Chair to consider, which is the point raised by Senator Kinsella. I would tend to lean toward his point and to suggest that we have a general debate on what "first opportunity" means as raised by our very esteemed friend Senator Graham.

**Senator Kinsella:** Honourable senators, the matter of whether or not the bill is a private or public bill only came to my attention this morning on the airplane as I was flying to Ottawa from my province of New Brunswick when I read in *The Globe and Mail* the story on Madam Justice Arbour.

As we read in Beauchesne's, according to Canadian standing orders and practice, there are only two kinds of bills: public and private. The British hybrid bill is not recognized in Canadian practice. A public bill relates to matters of public policy, while a private bill relates to matters of particular interest or benefit to a person or persons.

Quite frankly, perhaps I have not been following this bill as attentively as I should have been, but I did not know there was this dimension of it that became public knowledge this morning and then became explicated as I was taking my notes during Senator Cools' speech. Therefore, the criterion of the earliest possible opportunity has been met.

**Senator Cools:** Honourable senators, I should like to support Senator Prud'homme on this question of the meaning of "earliest opportunity." My understanding is that the expression is borrowed from the sections in the rule book regarding raising a point of privilege. As far as I am concerned, the issue of privilege is quite different from the issue of point of order.

On the narrow point of the meaning of the "earliest opportunity," I should like to share with honourable senators that even as it is applied to privilege, most jurisdictions, be it England, Australia, or, I believe, New Zealand, have recommended that the terminology be abandoned. There is not that much to be gained from resting on the issue of the earliest opportunity.

**Senator Graham:** Honourable senators, I have one other point with respect to the timing. I shall quote my honourable friend opposite, the Deputy Leader of the Opposition, in his remarks of June 19 when the bill had second reading. He concluded his excellent remarks by saying:

> Honourable senators, I do not believe that there are any major problems with this bill. The principle of the bill is quite clear to our side of the chamber and we support it.
>
> There may be some examination and consideration due in committee, which is where it ought to take place.

**Senator Berntson:** I do not disagree with that, but I have been persuaded.

**Senator Lynch-Staunton:** He is open-minded; that is why he is not a Liberal.

**Hon. Jerahmiel S. Grafstein:** Perhaps Senator Cools would allow a few more questions.

**Senator Lynch-Staunton:** We are talking about the point of order.

**The Hon. the Speaker:** Is this pertaining to the point of order that is before us?

**Senator Grafstein:** No.

**The Hon. the Speaker:** We must first conclude the point of order. Are there any other honourable senators who wish to speak to the point of order?

**Senator Cools:** Yes, Your Honour. When Senator Kinsella raised this issue, I thought it was valid and that I should defer. However, when the Chair takes consideration of what has been said in my speech and in the remarks of other honourable senators, His Honour should be aware of *The Globe and Mail* article to which we have all referred. That article could also be a part of His Honour's consideration of the issues of probity, form, admissibility, and principle on the question of a public bill versus a private bill. In that article in *The Globe and Mail* of Tuesday October 1, 1996, Madam Justice Arbour goes on at some length about her particular role in her new job.

I ask that His Honour include that article in his considerations.

**The Hon. the Speaker:** If no other honourable senator wishes to speak on the point of order, I shall take the matter under advisement, read carefully what has been said, and consult the authorities as well.

Regrettably, Honourable Senator Grafstein, there can be no question until I bring down my ruling.

Debate adjourned to await the ruling of the Speaker.

## NEWFOUNDLAND

CHANGES TO TERM 17 OF CONSTITUTION—
CONSIDERATION OF REPORT—POINT OF ORDER—
DEBATE ADJOURNED TO AWAIT SPEAKER'S RULING

On the Order:

> Resuming the debate on the motion of the Honourable Senator Rompkey, P.C. seconded by the Honourable Senator De Bané, P.C., for the adoption of the thirteenth report of the Standing Senate Committee on Legal and Constitutional Affairs *(respecting Term 17 of the Terms of Union of Newfoundland with Canada set out in the Schedule to the Newfoundland Act),* deposited with the Clerk of the Senate on July 17, 1996.

**Hon. C. William Doody:** Honourable senators, I will try to keep this under 15 minutes, and if some one asks me any questions, I shall try to be terse and accurate.

As I address this report, I should begin by congratulating Senator Carstairs for the professional and fair way in which she conducted the committee meetings both here in Ottawa and in St. John's, Newfoundland. She was professional and reasonable, and I thank her.

I thank the Senate of Canada for allowing the committee to travel to St. John's and for allowing the committee to hear the concerns of the people most affected by this proposed constitutional change, an opportunity not provided by the other place.

The staff, who prepared the original report at the direction of Senator Carstairs and her steering committee, a most fair and balanced report, are also to be congratulated. That report, unfortunately, bears little resemblance to the final report, but, nevertheless, they worked hard, their hours were long, their dedication should be noted, and I thank them.

• (1550)

This majority report before us was not the result of the deliberations of the staff of the steering committee but, rather, it was delivered in the form you see before you by Senator Rompkey. I assume he was assisted in its preparation by his soulmate and coach, Mr. Ed Roberts, the former Justice Minister of Newfoundland. I understand that Mr. Roberts was, or is, on retainer by the Department of Fisheries and Oceans at a reputed fee of $1,000 dollars per day to push this matter in Ottawa.

To use public funds from the budget of the Department of Fisheries and Oceans to pay a lobbyist to push a constitutional amendment on the erosion of minority rights on behalf of a provincial government has yet to be explained. I wish to tell the Leader of the Government in the Senate that I will ask a question of her on this matter, and I ask her to take notice that it has been raised.

The Minister of Fisheries and Oceans was quoted in the press as saying that "the funds for this lobbyist were distributed from the funds of the Deputy Minister of Fisheries and Oceans." What the Deputy Minister of Fisheries and Oceans has to do with the constitutional amendment in the Province of Newfoundland is a pretty wide leap for me at this point. We will hear more on that subject on another day, honourable senators. Perhaps the Leader of the Government in the Senate will explain it to us.

During the sessions in Newfoundland, the committee heard testimony from over 40 witnesses and received submissions, briefs, et cetera, from an additional 50 individuals and/or organizations. In addition, approximately 60 people gave the committee the benefit of their views and expressed their concerns as walk-on witnesses. Many of these people drove or flew from all over the province of Newfoundland. They came from Labrador, the northern peninsula, Stephenville and the south coast. Some drove more than 600 miles to tell senators of their deep apprehensions about the radical changes to the denominational education system that will flow from the suggested changes to Term 17 of the Terms of Union of Newfoundland and Canada.

In all fairness, I must say that not all of the testimony heard was against the proposed change. Some, such as the representatives of the groups who comprised the integrated educational system in Newfoundland, the Anglican, Presbyterian, Salvation Army and United Church people, appear to have few problems with the changes proposed. They appeared to agree with the new Term 17 with varying degrees of enthusiasm.

Nevertheless, these groups gave up their rights — or, at least, they have not exercised their rights to their own individual school systems. They did this voluntarily back in the 1960s. This right to their own individual schools is still alive — and will be — until, and if, this proposed Term 17 amendment passes.

Some others whom we heard, such as the "Yes means Yes" Committee, seemed to feel that the new Term 17 does not go far enough in changing the educational system. And, then there is a large minority of the population who do not feel that way, who do not wish to give up their rights, the rights guaranteed to them by the Terms of Union of Newfoundland and Canada in 1949.

The spokespersons for these people, nearly 45 per cent of the population — that is, Roman Catholics, Pentecostals, Seventh Day Adventists — made up the majority of the witnesses who appeared before us. These are the people whose passion and whose commitment are largely ignored in the majority report that we are now examining. Apparently, it would seem to the casual reader of this report, these people do not exist.

Politicians need not wonder why we are held in such low respect. The spin put on the evidence presented to us was disgraceful. We were presented with real concerns — concerns not reflected in either Senator Rompkey's report or in Premier Tobin's subsequent press release.

Honourable senators, who do we think we are fooling? The record was open to everyone. The television coverage, press coverage — both in print and on radio — and committee transcripts all show and report the feelings of the people who appeared.

Let me read from the press release issued by Premier Tobin subsequent to the issuing of the committee report. Premier Tobin says:

> I was very pleased to learn that the Senate Committee on Legal and Constitutional Affairs has made a clear recommendation that the Senate approve the resolution to amend Term 17 which was requested by the Government of Newfoundland and Labrador, and which has already received the approval of the House of Commons.

This statement was made, honourable senators, despite the fact that the committee split six to five.

Premier Tobin goes on to say:

> ...it is particularly gratifying that the Senate Committee concluded that the process the Government of Newfoundland and Labrador used to generate the amendment was fair. The Committee report states that each of the protected minorities whose rights would be affected was afforded every opportunity to participate in the public debate leading up to this Amendment including the hearings before the Royal Commission on Education, the Referendum and the general election of 1996.

Give me one minute, please, honourable senators, to touch on these three pillars of Premier Tobin's, which, in his opinion, make this affair legitimate.

First, let me touch on the Williams report. I presume this is the report to which Premier Tobin was referring. The Williams report, or the Williams Royal Commission, had approximately 1,041 written and oral submissions, representing 3,677 individuals and 384 groups and organizations throughout some 173 communities from all parts of the province of Newfoundland and Labrador. There were 128 petitions with 8,787 names. From all the evidence that was gathered, 75 per cent supported the existing system while only 9 per cent opposed denominational schooling. Supporting the existing system did not rule out reform. It did agree with the right of parents to have their children educated in an ambience of religious faith. Approximately 16 per cent of those people did not address the issue.

Mr. Williams and his fellow commissioners decided to ignore the view of those who made presentations because, presumably, they were supportive of the system. He implied that that made them unreliable. I refer honourable senators to page 67 of the report. A poll was then conducted and 1,001 individuals were polled. This poll would limit the number of participants who felt strongly enough to intervene directly. While he said the poll was reliable, he provided the disclaimer "subject to interpretation of the meaning of the questions and responses." I am referring to page 68 of his report.

I have a lot more information here relative to the Williams report which further muddies the waters and raises more questions, but what I have said is clear enough. Senators who are interested can look at the report themselves.

The truth is that the conclusions and recommendations of this report are based on questionable data. Nevertheless, the denominations involved have agreed to more than 90 per cent of this report's recommendations.

We have already talked about the referendum. It was not necessary and, if we look into the results of it deeply, the Government of Newfoundland and Labrador will tell you that they had no obligation to conduct it. They are right. They did not. The low turn-out, the paper-thin majority in favour of "Reform of the Education System," and the question itself have already been discussed. In any event, the majority of the population in any referendum will always win. The object of Term 17 and the Terms of Union was not to protect the rights of the majority; it was to protect the rights of the minority, and, in an open vote, the minority will always lose.

**Senator Prud'homme:** Of course!

**Senator Doody:** I went into this in some detail in my earlier comments and I will not repeat them again this time.

The general election of 1996 is the third pillar that gives legality, in the premier's eyes, to this process.

• (1600)

The simple truth is that the changes to Term 17 were not discussed in any detail during the election process. The Roman Catholic educational authority stated that they had an understanding with the government of Newfoundland that they would not pursue it, so they did not raise it. Premier Tobin has said that there was no such agreement. I have no doubt that he is right. Premier Tobin is a very astute politician, and I do not doubt for a minute that he would never make such an agreement. However, Mr. Fallon, the General Secretary of the Roman Catholic school authority, insists that he had that understanding.

I guess there is a difference between an agreement and an understanding. Perhaps a politician could define that nuance more easily than the superintendent of a school board.

Perhaps more telling is a statement in the brief presented by the Pentecostal authorities to our committee dealing with the 1996 election. They state:

> Pentecostals did not make the proposed constitutional amendment an election issue because the Liberal platform: 1. did not refer to any constitutional amendment; 2, the commitment was to consultation preceding reform; and 3, the commitment was to a continuing partnership in education with the churches; and, 4, there was an understanding with the Liberal Party that a constitutional amendment would not be made an election issue and there would be a renewed discussion to resolve the issue after the election.

I will leave the judgment to the honourable senators as to the merits of the positions of both sides of this question. In my opinion, Term 17 was not an issue in the provincial election, which I watched very closely.

To get back to Premier Tobin's press release, he states:

> The senators were also satisfied that, on balance, the rights of the protected minorities would be sufficiently protected by the proposed amendment.

I can tell honourable senators that here is one senator — and there are others — who is not at all convinced that the rights of the minorities will be protected by the proposed changes to Term 17, and here is one reason: In the proposed new Term 17, section (*a*) states:

> (*a*) Except as provided in paragraphs (*b*) and (*c*), schools established...shall continue to have the right to provide for religious education as provided in (*b*) and (*c*).

That is good. That is very good. Now let us have a look at section (*b*):

> (*b*) Subject to provincial legislation that is uniformly applicable to all schools specifying conditions for the establishment or continued operation of schools.

"Subject to provincial legislation," denominational education rights shall be continued. Honourable senators, I ask you what possible satisfaction can the minorities in Newfoundland take from the fact that they will be given denominational educational rights subject to provincial legislation? There is no satisfaction. There is fear. There is worry and concern.

Incredible as it may sound, no one outside the Government of Newfoundland has seen this crucial legislation to which the rights will be subjected. No one knows what the criteria will be. What geographical areas will be covered by this legislation? How many of what belief will be covered or protected? What numbers will be involved? What percentages will be involved? What will the busing rules and regulations be? What will the teaching criteria be? No one knows — but they will be subject to provincial legislation.

No one can realistically expect this or any legislature to wipe out a constitutional guarantee and replace it with a provincial guarantee covered by legislation unknown and unseen. We all know what regulations are like. Who knows what regulations will be brought in from time to time under this phantom legislation?

If rights could be protected by legislation, the Government of Canada would never have felt the need to introduce a Charter of Rights and Freedoms. Mr. Diefenbaker's Bill of Rights would have been amply sufficient to cover all the rights of Canadians from coast to coast. However, the government of the day felt, in its wisdom, that these rights should be enshrined in the Constitution; so they were, and so they are.

This is similarly true of the denominational educational rights of the Roman Catholics, the Pentecostals, the Seventh Day Adventists, and other groups of persons in Newfoundland who want this protection. Their constitutional protection would, under this proposed amendment, be taken away from them and put in the hands of the legislators in the House of Assembly in Confederation Building in St. John's, and that, honourable senators, is not right.

I do not want to repeat all the comments I made during my first intervention in this debate. I will refer the text to those people who are interested in the background of this question.

It seems to me, honourable senators, because of the situation of the Senate with its six-month suspensive veto, that no matter what we do here, the House of Commons will have its way in December of this year. I propose to try to convince honourable senators in this place and, hopefully, legislators in the other place, of the advisability of at least — at the very least — amending this monstrosity to some degree.

It is continually stated by the provincial government authorities in Newfoundland that it is economically essential that this constitutional change be made, despite the fact that it infringes on the rights of very large minorities in the province — rights which these people passionately feel are central to their way of life; their sense of what is essential to the proper morale, ethical and spiritual development of their children. This group of people, nearly half of the population, are asking for the protection of Parliament to preserve these rights.

**The Hon. the Acting Speaker:** Order. I must inform the house that Senator Doody has spoken for his allotted 15 minutes. He could continue with unanimous consent.

Is there such consent?

**Hon. Senators:** Agreed.

**Senator Doody:** I thank honourable senators.

Let me return to the economic side of this question, honourable senators. This is Newfoundland's big fall-back position at the end of all discussions, all criticisms, all objections to this Term 17. It has to do with economics. Let me give some examples of what has been accomplished since 1967. In fact, most of the duplication — that myth which has been incessantly dangled before us — has already been eliminated from the system. Any excess in the system is continually being removed through cooperation.

Today there are schools in 293 communities; in 1967, there were schools in 800 communities. Today there are fewer than 480 schools; in 1967, there were more than 1,046 schools. Today, 260 communities, or 89 per cent of the communities in the province, have a single school system. Today, 33 communities, or 11 per cent, have more than one school system. Today, there are 27 school boards; in 1967, there were 270 school boards. I know that sounds absurd, but not if you think about the transportation and communications situation in Newfoundland prior to 1965.

Many members of this house will remember Mr. Smallwood's election motto in 1965: We will finish the drive in 1965, thanks to Mr. Pearson.

That was when the Trans-Canada Highway was completed, the first time that we had a road across the province. The secondary roads into the small communities and outports were merely tracks, almost non-existent. The highway, plus the amalgamation of the four denominations which I mentioned earlier, contributed to the rationalization of the system.

The process has been ongoing: Those 27 school boards have now been further reduced, through agreement of the various denominations, to 10 multi-denominational school boards. There are now 30 formal, joint-service agreements. These joint-service agreements involve two or more school boards voluntarily agreeing to jointly operate a single school. These agreements have resulted in the consolidation of 77 schools. Lack of government funding to enable further consolidation is now the only obstacle to more joint service schools. One cannot blame the Government of Newfoundland for this. It does not have the money. However, removing the rights of minorities will not make any more money available to the Government of Newfoundland and Labrador.

• (1610)

Present circumstances, honourable senators, call for further reform and improvement. The churches have supported all government initiatives pertaining to cost efficiency and quality of education; therefore they do not believe that a constitutional amendment is necessary to achieve reform.

To discuss this matter in terms of economics is to miss the point completely. Economics, particularly in our little province of Newfoundland, is vital. No one in this chamber is more aware of the financial limits of Newfoundland and of the need for economic restraint than I. I served for some time as Minister of Finance in the province and as President of the Treasury Board. I know what it was like then and I know that it is even more difficult now.

As I pointed out, much has been done in this area of reform and in other areas of economizing as well, and this without the Draconian and unnecessary amendment to the Constitution which we have before us now.

There is no doubt that more can be done. The stakeholders in Newfoundland have indicated their willingness to cooperate toward this end, but no government should be allowed to abolish, diminish or erode minority rights without the consent of the minorities involved.

I am aware of the limits of the authority of the Senate in constitutional matters — six month's suspensive veto — although I feel that, if allowed, this chamber would send this proposed constitutional amendment to oblivion where it belongs.

To digress for just a moment, honourable senators, I will mention one positive thing that has come out of this, that is, the agreement of the province of Newfoundland to, at long last, establish a francophone school board. I must congratulate Senator Simard and other francophone senators who have worked so hard toward this end. As a matter of fact, Senator Simard attended the meeting that Premier Tobin called for the Newfoundland senators to discuss the amendment to Term 17. Senator Simard very forcefully put forward the position of the Newfoundland francophone community at that time. I am delighted to see that partly, or perhaps entirely, through his efforts this laudable objective has been achieved. However, in saying that, I must also add that this new right will be subject to the whims of provincial legislators, just as every other educational right in the province will be henceforth if this measure passes.

Despite the fact that we now have a francophone school board, about which I am very happy, there will be no Roman Catholic or Pentecostal board if this amendment passes. However, that is fine with me because these bodies have agreed to that, which is the way it should be.

Honourable senators, to return to the main issue here, I will quote from a brochure issued by the Government of Newfoundland during the referendum about which we have heard so much — this Government of Newfoundland which, according to authorities there, did not get involved in the referendum. I will be glad to table a copy of the brochure, if asked. It states:

> The revised term will retain the right to religious education in all schools. The new term will not provide for the continued existence of separate denominational school boards; however, it will provide for schools for the separate denominations where numbers warrant and for the election of two-thirds of the members of school boards along denominational lines.

Honourable senators, the existence of separate denominational school boards is a thing of the past, and that has been done with the agreement of all people involved. As I said, we now have, or we will have, 10 interdenominational school boards. The election of two-thirds of the members will no doubt come to pass. This is fine, if it is done with the agreement of the partners, and I understand they all agree.

Perhaps the brochure I have just quoted from was passed off as some sort of error, typo or misprint, although that is hardly likely.

I also have with me, which I would also be willing to table, a transcript of an interview given by Premier Tobin to Jason Moscovitz of the CBC, dated Saturday, May 18, 1996 at 10 a.m., in which Jason Moscovitz asked the premier:

> You are not getting rid of Catholic schools?

Premier Tobin replied:

> No, where numbers warrant under the Amendment as is proposed, that if the parents so decide. And that's what it comes down to a decision by the parents and surely not even the Canadian Conference of Catholic Bishops would argue that parents — be they Catholic or otherwise — shouldn't have some say in what kind of schooling their children should have.

That is surely a commitment from the premier of the province.

The federal Minister of Justice, Mr. Allan Rock, also assured us that, "single denominational schools will exist where requested by the parents and where there are sufficient numbers of students for a viable school."

To assist the Government of Newfoundland and to allow for greater certainty in Premier Tobin's pledge to allow for denominational schools where numbers warrant, I propose to move an amendment.

I will also move for the removal of the reference to the constitutional clause being "subject to provincial legislation."

We will also propose another small amendment that would have the effect of allowing the denominations some input in policy decision-making. One of my colleagues will speak to this matter soon.

Honourable senators, amending this proposed constitutional change will have the effect of sending it back to the other place. I hope that this will give the members of the House of Commons an opportunity to read the transcript of the Senate committee's hearings, to read and study the briefs and other documents presented to the committee, to weigh the evidence and to decide, on the evidence available, on the merits of allowing this terrible proposed change to our Constitution to become law.

Barring the defeat of this proposed Term 17 by the House of Commons, which I sincerely hope takes place, at the very least the other place, upon sober reflection and upon having studied the evidence, should, I submit, adopt these sensible amendments suggested by senators.

I humbly ask my colleagues to support these reasonable amendments, not only on their own merits but because of the effect they will have on further applications for the diminution of minority rights in other situations in other provinces.

Honourable senators, I move, seconded by the Honourable Senator Kinsella:

> That the report be not now adopted, but that it be amended by deleting the words "without amendment, but with a dissenting opinion" and substituting therefor the following:
>
> with the following amendment:
>
> Delete the words in paragraph (*b*) of Term 17 that precede subparagraph (i) and substitute therefor the words: "where numbers warrant".

I thank honourable senators for their attention and patience.

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

**Some Hon. Senators:** Agreed.

**Hon. P. Derek Lewis:** Would Senator Doody accept a question? He said earlier that if this proposed amendment —

**Senator Doody:** Could I ask the Chair to give us the status of this amendment as it now stands? My understanding is that it was adopted, and I think the Speaker said it was adopted. After we get that settled, I would be delighted to answer a question.

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

**Senator Berntson:** You have done that already.

**The Hon. the Speaker:** That is as far as I got.

**Some Hon. Senators:** No.

**Some Hon. Senators:** Yes.

**Senator Lynch-Staunton:** You said it was adopted. You then said, Your Honour, "Adopted".

**The Hon. the Speaker:** No, I did not.

**Senator Kinsella:** Get the blues.

**The Hon. the Speaker:** I asked the usual question; "Is it your pleasure, honourable senators, to adopt the motion?"

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Then I waited to see if anyone would rise to speak. If no one wishes to speak, then I will put the question.

**Senator Lynch-Staunton:** You put the question.

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

**Senator Kinsella:** You keep putting the question.

**Some Hon. Senators:** No.

[*Translation*]

• (1620)

**Hon. Marcel Prud'homme:** Honourable senators, on a point of order. I believe that certain senators did not perhaps realize the importance of their agreement, but you very clearly said "Adopted" two or three times.

[*English*]

It reminds me of the Quebec referendum, you know; you are putting the question until you get the answer you want.

I put it to you with respect that you clearly said, “Is the amendment adopted?” No one seems to have moved. Clearly, I heard from here — and I am very far — but now it is like begging honourable senators to say ”Are you sure you want it?” After consideration and reflection, it was adopted, as far as I can see.

I will leave it to others to debate this issue. As far as I am concerned, you do not need — and I say kindly to you, Your Honour — you do not need to beg the Senate, to go on your knees and say, “Are you following the debate, gentlemen and ladies? Are you sure you do not want to reconsider?”

You have put the question clearly; it has been accepted. Senator Lewis rose to ask a question of precision of the Honourable Senator Doody. As far as I am concerned, from that very end, I stand.

**Senator Kinsella:** The record of what transpired, honourable senators, is recorded by the *Hansard* of this house. If the Speaker needs to consult with *Hansard*, perhaps he would like to suspend the sitting until he gets a copy of that document.

It is clear from where I sat, as described by Senator Prud’homme, who sits pretty far away from the Chair, what transpired. It would take two-thirds of the vote to change that.

**Senator Berntson:** Honourable senators, further to what has already been put on the record, my colleague from Newfoundland was recognized in order that he might put a question to Senator Doody, which would indicate to me that the question was disposed of. When he stood up first, you told him to sit down until the question was disposed of. Then he was recognized, so obviously the question had been disposed of and adopted.

**Senator Graham:** Honourable senators, I would find it difficult to have the adoption of an amendment at this particular point in time, recognizing that there is nothing official on the record.

There were discussions among the leadership, indeed between the Deputy Leader of the Opposition and myself earlier today, with respect to the disposal of any amendments that might be proposed by the opposition. Indeed, it was our first understanding that there would be two speakers from the opposition today: Senator Doody and Senator Cogger, each moving an amendment.

**Senator Berntson:** No, no.

**Senator Graham:** It was agreed between the leadership, between the Deputy Leader of the Opposition and myself, that those amendments would be dealt with concurrently, and voted on after the debate was concluded.

**Senator Prud’homme:** On a question of privilege on this point.

I am getting a little bit fed up with being consulted once in a while when it suits and not when it does not. I am no part of this deal. It reminds me of when we had a decision to make earlier last week about having a distinguished guest come here and address us in this chamber. I willingly said, “Yes, great for the Senate.” Discussion took place between the two parties. One was well-informed, the other one — perhaps there had been a lack of communication. I wonder whether this agreement between the two leaders had been conveyed to all the members of the Senate.

One thing of which I can assure you: It was not conveyed to me. I was not called. I did not know there would be only two speakers today. I did not know that, after that, there had been an agreement. I am surprised because usually on these very important issues someone gets up and says, “I am sorry, I do not agree.”

If you ask for unanimous consent today on any matter, I assure you on any matter, even if it was Thursday and you agreed not to come back next week, you will not get my agreement. Feeling as badly as I do, you will not get my agreement; is that clear?

I am not here as a rubber stamp. I have been patient for three years. I cajole, I smile, I ask to be on committees. I have a lot to offer. I am not pretentious; I have a lot to offer, but they play games. Everybody is nice and they say, “Marcel, you will not sink the ship.”

I keep saying I may some day get to use the book. I read the book, the red book — not the Red Book that you know about; I have read the *Rules of the Senate*. If you want me to apply it all the time, you know, it will be very troublesome.

I will find myself completely alone in my little cubicle downstairs. I do not mind; I can live alone. I do not want to be a party-pooper to an agreement. First, however, I did not know about this agreement. Any senator can talk. Was every senator informed? Senator Simard, did you know that there would be only two speakers on this matter today?

**Senator Simard:** No.

**Senator Prud’homme:** I will ask Senator Forest and Senator Léonce Mercier, who is new, and a good friend, if they knew that there would be only two speakers. He has been following the debate closely. Senator Taylor is very interested as well.

We are working with a Constitution. Without a Constitution, there is anarchy. I sat too long on the other side to accept that little deal on such a matter of such importance, minority rights.

Your minorities’ rights, Senator Watt, Senator Adams, Senator Simard, Senator Corbin, Senator Landry. We are talking about minority rights. It is not only French-English minority rights; it is also religious minority rights.

[*Translation*]

It is a way of thinking, a way of acting, and it will go through quietly like this. Do as you wish, but if you seek unanimous consent today on anything at all, I am sorry, but I will be saying no, even if it seems reasonable to you.

[*English*]

**The Hon. the Speaker:** I think we are getting somewhat off the point. The question before us was whether or not I had said "Adopted. "

Quite honestly, honourable senators, I do not believe that I did. However, if I did, I am prepared to stand by the *Hansard* and the transcript.

Why not leave the matter in abeyance now; let us wait to see what the transcript says, and the matter will stand where it stands now on the Order Paper until tomorrow. Is that agreed?

**Senator Prud'homme:** Very reasonable.

**Senator Kinsella:** Honourable senators —

**Hon. Sharon Carstairs:** I have been up on my feet five times.

**Senator Kinsella:** I am prepared to yield to the Honourable Senator Carstairs.

**Senator Carstairs:** Thank you. I have a couple of questions that I want to ask about the procedure. I thought that what I was supporting was the right of Senator Doody to put this motion before us.

I happen to agree entirely with what Senator Doody has had to say today. However, I do not happen to agree with this particular amendment.

I did not know that I was supposedly voting in favour of the amendment today. I thought I was voting for the right of Senator Doody to put this motion before us.

I have to be honest; I have been here two years and I have never understood why we stand up, move motions, sit down, and then we stand up and speak to those motions. Then, after the fact, we vote on those motions. That is certainly not the procedure that I am used to but it is clearly Senate procedure. How is it that we do it sometimes and not other times?

**Senator Kinsella:** Honourable senators, I simply request that copies of *Hansard* and of the tape be provided to both sides in an unedited format.

**The Hon. the Speaker:** It is agreeable to me and I think it is the best way of solving the question. The transcript will speak for itself.

Shall the matter stand until tomorrow?

POINT OF ORDER

**Hon. Bill Rompkey:** On a point of order, honourable senators, I wonder what we are agreeing to stand. Are we agreeing to stand that a decision was actually taken? I certainly would not agree to that. My understanding was that an amendment was introduced. We did not even see the amendment before today. We have just looked at it. To be asked to judge an amendment that one has not seen — not to mention debated — it seems to me would not be the proper course to follow. If we are being asked to agree to let a matter stand, that matter being that a decision for or against an amendment was taken, then I certainly could not agree to let that stand on the record today.

I ask for your ruling, Your Honour, as to exactly what the status is. My understanding is that an amendment has been tabled for debate and, at some point, a vote. Presumably we have to examine it and debate it before we agree to it.

**The Hon. the Speaker:** Let me attempt to put the matter clearly. Honourable Senator Doody moved an amendment. He read it. As is normal, it was brought to me at the Chair. I read the amendment. The normal question then is: Is it your pleasure, honourable senators, to adopt the motion in amendment? That is the standard question. I did not hear answers. I expected someone would get up to speak. I do not believe I said "Adopted." Some honourable senators believe I said that. The amendment is certainly before the Senate. The sole question is did I or did I not say "Adopted" after I read the motion? If the transcript shows that I said "Adopted," then, in my opinion, it is adopted because no one stood up to say, "No."

**Hon. B. Alasdair Graham (Deputy Leader of the Government):** If I may try to recall to the honourable senators' and to the Speaker's mind, in a previous debate the Honourable Speaker agreed that in future he would say, before taking a definitive vote, "Does any other honourable senator wish to speak?" I believe that the record will show that. Senator Lewis was rising to ask a question. It was his intention, if no other senator wanted to speak today, to take the adjournment.

**Senator Berntson:** Oh, sure.

**Senator Lynch-Staunton:** He still can.

**Senator Graham:** With great respect to Senator Prud'homme, it has been an understanding that all honourable senators who wished to participate in the debate, or with respect to any amendments, would be encouraged to participate.

**Senator Lynch-Staunton:** You should have told the Speaker that.

**Hon. P. Derek Lewis:** It was my intention to get up. I assumed that debate would follow. I intended to ask a question and then there would be debate on the motion.

**Senator Lynch-Staunton:** We are in the hands of the Speaker. We abide by the Speaker's decisions.

**The Hon. the Speaker:** Honourable senators, is it necessary to repeat this?

**Senator Lynch-Staunton:** No.

**The Hon. the Speaker:** Shall the matter stand until tomorrow, when we have had a chance to look at the transcript?

**Hon. Senators:** Agreed.

Debate adjourned to await the ruling of the Speaker.

## CANADA ELECTIONS ACT

BILL TO AMEND—THIRD READING

**Hon. Nicholas W. Taylor** moved the third reading of Bill C-243, to amend the Canada Elections Act (reimbursement of election expenses).

**Hon. Marcel Prud'homme:** Senator Taylor, I want to make sure of some things before we pass this bill. For honourable senators and for myself, would you kindly give a few words of explanation on this bill before us? I realize that the bill has gone through second reading and that a member of the House of Commons appeared before our committee. It is an important bill. I think we can say "yes" to it right away, but there are immense implications to it. If no one else wants to speak on it, then I will.

For 30 years, I have sat on various committees studying the Election Expenses Act, the Canada Elections Act, the Referendum Act and others. The committee studying this bill was very ably chaired by Senator Carstairs. She was fair. Only one witness asked to appear, the Natural Law Party, because they will be penalized by this bill. I will explain what I mean by that comment, but no voting members of the committee saw fit to allow the Natural Law Party to appear. They spent over $3 million but were only reimbursed around $700,000 — I do not have the exact figures with me today. They will be denied now the right to have any of their expenses paid by the taxpayers.

This is a bill sponsored by a member of the Reform Party. That is interesting for senators on both sides of the house to know. Because the Natural Law Party only got six-tenths of 1 per cent of the vote, they will be denied forever. Members would like to know that from now on each party will have to have 2 per cent nationally to be reimbursed some of the money they spent. We are not talking about individuals but parties.

For reasons I do not know, someone from the Natural Law Party got in touch with me and said they would like to appear. I explained — I think I was fair to the committee — that the committee members had read their letter and saw fit not to invite their representative to appear. Therefore, from now on, two parties which received a reimbursement after the last election will not receive reimbursements after the next election unless they achieve 2 per cent nationally or 5 per cent in the districts where they may have presented candidates. That is what this bill is all about. It is a very important bill regarding election expenses. It is an important bill for the next election.

Honourable senators, we may find this bill under attack in court as being unconstitutional. Other provisions of the act have been attacked. In the wisdom of the members of the committee — and I see some of them here today acknowledging what I have said — they decided that 2 per cent of the vote is needed.

• (1640)

Personally, to be on record, I find that reasonable too. I was merely considering our position when a bill comes for third reading. On the record, since many people read our minutes, they will see that we adopted at third reading a bill pertaining to election expenses for political parties. However, honourable senators should understand that people who read *Hansard* do not read the bill. They will know that a bill was accepted at third reading, but they will not know what it is about. I kindly submit that perhaps third reading of a bill may be a good time for a line or two of explanation, saying exactly what the bill is all about.

As far as I am concerned, if there was to be a vote — and I did not think there would be a vote — I would vote for it.

**Hon. Sharon Carstairs:** I should like to explain the operations of the committee on this particular bill a little because Senator Prud'homme alluded to them, and I think it is necessary to explain that to some degree.

This particular piece of legislation was proposed by a reform member from Calgary, Mr. McClelland. We wrote to all of the registered political parties in Canada and asked them to submit to the committee a written submission of any arguments that they wished the committee to receive, either in favour of or in opposition to this particular piece of legislation. We received two submissions: one from the Natural Law Party and the other from the Marxist Leninist Party. It is true that the Natural Law Party also asked if they could appear before us. Frankly, they had gone into some detail in their written submission to indicate to us why they objected. They objected for very simple reasons: Although they received less than the 2 per cent ceiling that is now proposed in this bill, they spent a very large sum of money.

One of the reasons for the introduction of this bill was that both the member who proposed the bill, and also Mr. Kingsley, our Chief Electoral Officer, were concerned that people were, frankly, benefiting at the expense of the taxpayers of Canada for their spending of very large sums of money. One of the requirements of the bill was that a party had to spend 10 per cent of the ceiling, which is about $10 million if you run 295 candidates, in order to qualify for any rebate. Many of the small parties registered in this country cannot ever spend the 10 per cent, so they are never allowed to receive any moneys back. They cannot spend the 10 per cent because, frankly, they cannot raise the $1 million that is required.

Bear that in mind with the fact that if you are a candidate you have spending limits, but you must achieve 15 per cent of the popular vote in order to receive any rebate from the federal treasury. The party, however, could receive moneys back if they spent 10 per cent of their allowable limit, and there was no percentage ceiling in order for them to receive that refund. This bill will, in fact, introduce a threshold of 2 per cent nationally, and 5 per cent in a particular constituency, in order for the party to receive money — not the candidate, but the party to receive money. This is a recommendation, by the way, of the Chief Electoral Officer of Canada. It was introduced by way of a private member's bill, and it was unanimously approved by the committee.

**Senator Taylor:** I could not improve upon the explanation given by the chairman of the committee. However, I would remind the honourable senator who raised the question of two things: I introduced the bill back in June. The honourable senator did embarrass me. I had thrown away everything in June, realizing that in our accommodation here, there is a limited capacity in which to keep paper. I thought surely speeches that had been given in June were not necessary to keep on file. As a matter of fact, some people accused me of saying too much. If anyone wanted an explanation, that was available in June when I introduced the bill. This autumn, the chairman of the committee explained it again.

I will not try to give a lecture here, because we have just gone through the process on a point of order. In general, Beauchesne's indicates that, on third reading, all that is really permissible is either to hoist the bill or kill it. There is little debate. Beauchesne's says that amendments are supposed to be made at second reading and committee stage. If we want it on the books again a third time, we now have it. It might be that some honourable senators missed the debate on this bill because they were not present during second reading debate, and that we should repeat our argument on a bill three times, but I did not think that that was necessary.

**Senator Prud'homme:** Honourable senators, I did not want to embarrass Senator Taylor. However, I am glad I raised the matter to allow the —

**The Hon. the Speaker:** Is this a question of the Honourable Senator Taylor?

**Senator Prud'homme:** Yes. Beauchesne's may indeed say what the honourable senator has recited, but we have not seen anything on third reading of Bill C-17. You may think that third reading is only a rubber stamp, but I doubt that very much. On third reading, we could amend the bill,or we could postpone it for six months. There are limited amendments on third reading, but there could be a full debate on third reading, senator.

**Senator Taylor:** That answers the question. Certainly, I did not try to kill an otherwise live reading at all. It is just that Beauchesne's says, generally speaking, there is introduction of a bill at first reading, debate at second reading, amendments at committee, and on third reading one can speak again on it; there is no question about that. Especially if you have lost, you want one more kick at the can to really get after it.

When the honourable senator asked for an explanation, I was saying that such an explanation had been given twice before. Please do not take me the wrong way, my honourable friend. Any time you ask me for an explanation, you will always be assured of a torrent of words.

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

Motion agreed to and bill read the third time and passed.

## BROADCASTING ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

**Hon. Eugene Whelan** moved second reading of Bill C-216, to amend the Broadcasting Act (broadcasting policy).

He said: Honourable senators, this bill received first reading on September 24, 1996.

Many of you may recall the great cable revolt of January 1995 when consumers protested against the outrageous practice of negative-option billing by cable companies. At the heart of this protest was a demand from Canadian consumers that legislators put a stop to negative-option billing once and for all.

The fact is that nothing has changed since that time. Even after the consumer revolt, after the complaints to the CRTC, after all the calls and letters to members of Parliament, the cable monopolies continued to use negative-option billing to market the last round of specialty channels. The onus was still on the consumer to somehow cancel the new service before it showed up on their bill.

In September of this year, the CRTC licensed 23 new specialty channels chosen from 40 applicants, including the gardening channel, the cartoon channel, and the horse network. The question remains: who will protect consumers from future cable rip-offs? The answer is simple. We will protect consumers by passing Bill C-216, and finally levelling the playing field among the industry, the regulator, and the consumer.

• (1650)

The facts are that Bill C-216 only applies to non-mandatory pay or specialty television services. The CRTC will continue to decide whether or not a channel is mandatory. This bill does not affect existing channels such as RDI, CBC, CTV, TSN or MuchMusic. The small cable companies — less than 2,000 subscribers, which are mostly in rural areas — have been exempted from this bill. This bill does not prevent cable companies from substituting one channel for another, provided that the price does not increase. The CRTC has licensed seven new specialty channels that will hit the air in September of 1997.

Canada's broadcasting policy is in a state of flux. No one knows exactly where the lines will be drawn once competition for the provision of the programming services has been opened up to the telephone companies, the direct-to-home satellite companies and to wireless cable. In passing Bill C-216, we can protect consumers by including two simple words in the policy section of the Broadcasting Act, namely, “prior consent.” Imagine that if this bill passes, then the cable company or other distribution undertaking would actually be required to obtain prior consent from the consumer before charging for the new service.

In closing, I would invite honourable senators to review and give speedy passage to Bill C-216 in committee study, which will offer us the opportunity to examine more closely the consumer protection element of this bill.

On motion of Senator Bolduc, debate adjourned.

[*Translation*]

## CRIMINAL CODE OF CANADA

SECTION 43— INQUIRY—DEBATE CONTINUED

On the order:

> Resuming the debate on the inquiry of the Honourable Senator Carstairs calling the attention of the Senate to section 43 of the Criminal Code of Canada.

**Hon. Rose-Marie Losier-Cool:** Honourable senators, I am pleased to take part in the debate on the inquiry of the Honourable Senator Carstairs with respect to section 43 of the Criminal Code. The debate surrounding this issue affects us all in one way or another. We cannot remain insensitive to a child receiving an undeserved spanking, or to those childhood memories of some form of corporal punishment from a teacher that left a bitter taste. Scenes like this are fixed in our memory and still have the power to hurt.

Honourable senators, the time has come, once again, to look more closely at the issue of section 43 of Canada's Criminal Code. Canada is recognized the world over as the best country in which to live, a country with excellent living conditions. We are always proud to stand up and say so when the opportunity arises.

However, when we realize that 75 per cent of Canadian parents use some form of physical discipline, more commonly known as corporal punishment, as a means of controlling or modifying the behaviour of their children, some serious questions are in order.

This practice continues, despite a growing number of studies showing that it has no positive effect on children. Children are too often at risk when physical discipline is used.

Honourable senators, I believe that this is an issue that arises from the lack of information and education for parents, future parents and the public in general. The Canadian public in general lacks alternative methods of raising its children and modifying certain inappropriate behaviours. A large number of parents use this method, which was used on them when they themselves were children. They therefore use the methods with which they are familiar and which they learned during their childhood.

As Joan Durrant says in chapter two of the book *Readings in Child Development: A Canadian Perspective* by K. Covell:

[*English*]

If children are viewed as inherently bad and in need of punishment for proper socialization, this conflict will likely be resolved in favour of parents' rights to use corporal punishment. If, however, children are viewed as inherently vulnerable and in need of special protection, children's rights to their physical integrity will likely be supported.

There are alternatives. On May 27, 1996, the Ottawa *Citizen* published an article entitled "Demands for brochure shows parents want alternatives to spanking". The brochure was co-written by Professor Joan Durrant of the University of the Manitoba. Mrs. Durrant, who is an expert in the field, says that the demand for the brochure shows that parents are looking for alternatives to corporal punishment. Mrs. Durrant says:

> The level of interest has been quite astonishing. We have known for a long time that it isn't beneficial (to spank) kids. But the information on it wasn't available to the public.

The brochure "Spanking: Should I or Shouldn't I?" says:

> ...physical punishment causes behaviour problems and makes children more aggressive.

This excellent educational initiative, which is funded by Health Canada and non-profit organizations, shows us that people are looking for alternatives to corporal punishment.

The findings of two 1992 surveys conducted by the same Canadian expert in this field were troubling. A minority of 30.4 per cent of respondents in a Winnipeg urban area supported the idea that Canada should pass legislation like the 1979 Swedish law making corporal punishment illegal. If it were demonstrated that the Swedish law reduced injuries among children, 65.4 per cent of respondents would support the passage of similar legislation.

[*Translation*]

Honourable senators, after passing legislation banning corporal punishment in 1979, Sweden launched very comprehensive educational initiatives so that the public would be informed of the adverse effects of this form of punishment and of alternate methods that could be used to discipline children.

[*English*]

According to the *Journal of Comparative Family Studies*:

> The main purpose of the law appears to be establishment of a norm against all forms of physical punishment, which would influence parents from such methods.

[*Translation*]

These measures have proven effective over time in informing the public and changing public attitudes toward the use of corporal punishment.

Between 1965 and 1968, the proportion of Swedes who believed corporal punishment was necessary dropped from 53 per cent to 42 per cent, but by 1994, it had fallen to a mere 11 per cent. As you can see, the extensive educational campaign launched by the Swedish commission on the right of the child was successful. In Canada, there is a serious need for an information campaign to increase awareness about the harm done by using violence against children, all for nothing, since violence does not change behaviour.

• (1700)

Amending the existing legislation is not enough to offer alternatives to parents looking to change their children's behaviour.

The focus should be on parents acquiring new child-rearing skills before thinking of criminalizing methods regarded as inacceptable or inappropriate.

Looking at the situation in Canadian schools, under section 43 of the Criminal Code, a schoolteacher, like a parent or a tutor, is justified, and I quote:

> in using force ... if the force does not exceed what is reasonable.

British Columbia is the only Canadian province not to approve corporal punishment. In New Brunswick, the Schools Act prohibits corporal punishment, while not providing a definition. Subsection 70.(2) states:

A teacher may not punish a pupil using corporal punishment.

The position of the Francophone Schoolteachers Association of New Brunswick is not to favour corporal punishment. Most of Canada's teaching associations do not support corporal punishment. A growing number of schools are trying to implement alternative programs that will teach our children how to react in a calm, peaceful and thoughtful way in cases of conflict or misunderstanding.

In New Brunswick, for example, more and more French schools are setting up and adopting dispute-resolution methods managed by both students and teachers in the classroom. They are adopting measures that have proven effective and rewarding for both students and teachers.

When he appeared before the Committee on Justice and Legal Affairs in April 1994 to discuss the Main Estimates, the Minister of Justice stated that his department, together with other federal departments and women's associations, was looking at the issue of children and corporal punishment, that is to say, the use of force to punish children.

Honourable senators, Canadians often see themselves as more humane, more socially progressive than the Americans. However, if we look more closely at the Canadian legislation on corporal punishment, our values are not as different as we like to think.

Together with the federal government, the Senate must take a closer look at section 43 of the Criminal Code and take measures to repeal something that affects many Canadian children. The Swedish model has proven itself; by implementing educational measures, parents found ways other than corporal punishment to control their children.

[*English*]

Just remember that children are people. Let us ensure that their rights are protected.

**The Hon. the Speaker:** If no other honourable senator wishes to speak, this inquiry will be considered debated.

**Hon. B. Alasdair Graham (Deputy Leader of the Government):** I would draw to the attention of honourable senators that the item was standing in the name of Senator Cools. Under regular procedure and as a courtesy, she would have yielded to Senator Losier-Cool on this occasion. If there is agreement, it should continue to stand in the name of Senator Cools.

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

**Hon. Senators:** Agreed.

On motion of Senator Graham, for Senator Cools, debate adjourned.

The Senate adjourned until Wednesday, October 2, 1996, at 1:30 p.m.

# APPENDIX

Officers of the Senate

The Ministry

Senators

(Listed according to seniority, alphabetically and by provinces)

Committees of the Senate

**THE SPEAKER**

THE HONOURABLE GILDAS L. MOLGAT

**THE LEADER OF THE GOVERNMENT**

THE HONOURABLE JOYCE FAIRBAIRN, P.C.

**THE LEADER OF THE OPPOSITION**

THE HONOURABLE JOHN LYNCH-STAUNTON

**OFFICERS OF THE SENATE**

**CLERK OF THE SENATE AND CLERK OF THE PARLIAMENTS**

PAUL C. BÉLISLE ESQ.

**CLERK ASSISTANT OF THE SENATE**

RICHARD G. GREENE

**LAW CLERK AND PARLIAMENTARY COUNSEL**

Mark Audcent

**GENTLEMAN USHER OF THE BLACK ROD**

COL. JEAN DORÉ, C.D.

## THE MINISTRY

According to Precedence

(October 1, 1996)

| | |
|---|---|
| The Right Hon. Jean Chrétien | Prime Minister |
| The Hon. Herbert Eser Gray | Leader of the Government in the House of Commons and Solicitor General of Canada |
| The Hon. Lloyd Axworthy | Minister of Foreign Affairs |
| The Hon. David Michael Collenette | Minister of National Defence and Minister of Veterans Affairs |
| The Hon. David Anderson | Minister of Transport |
| The Hon. Ralph E. Goodale | Minister of Agriculture and Agri-Food |
| The Hon. David Charles Dingwall | Minister of Health |
| The Hon. Ron Irwin | Minister of Indian Affairs and Northern Development |
| The Hon. Joyce Fairbairn | Leader of the Government in the Senate and Minister with special responsibility for Literacy |
| The Hon. Sheila Copps | Deputy Prime Minister and Minister of Canadian Heritage |
| The Hon. Sergio Marchi | Minister of Environment |
| The Hon. John Manley | Minister of Industry, Minister for the Atlantic Canada Opportunities Agency, Minister of Western Economic Diversification and Minister responsible for the Federal Office of Regional Development-Quebec |
| The Hon. Diane Marleau | Minister of Public Works and Government Services |
| The Hon. Paul Martin | Minister of Finance |
| The Hon. Douglas Young | Minister of Human Resources Development |
| The Hon. Arthur C. Eggleton | Minister of International Trade |
| The Hon. Marcel Massé | President of the Treasury Board and Minister responsible for Infrastructure |
| The Hon. Anne McLellan | Minister of Natural Resources |
| The Hon. Allan Rock | Minister of Justice and Attorney General of Canada |
| The Hon. Alfonso Gagliano | Minister of Labour and Deputy Leader of the Government in the House of Commons |
| The Hon. Lucienne Robillard | Minister of Citizenship and Immigration |
| The Hon. Fred J. Mifflin | Minister of Fisheries and Oceans |
| The Hon. Jane Stewart | Minister of National Revenue |
| The Hon. Stéphane Dion | President of the Queen's Privy Council for Canada, Minister of Intergovernmental Affairs and Minister responsible for Public Service Renewal |
| The Hon. Pierre Pettigrew | Minister for International Cooperation and Minister responsible for Francophonie |
| The Hon. Fernand Robichaud | Secretary of State (Agriculture and Agri-food, Fisheries and Oceans) |
| The Hon. Ethel Blondin-Andrew | Secretary of State (Training and Youth) |
| The Hon. Lawrence MacAulay | Secretary of State (Veterans) (Atlantic Canada Opportunities Agency) |
| The Hon. Christine Stewart | Secretary of State (Latin America and Africa) |
| The Hon. Raymond Chan | Secretary of State (Asia-Pacific) |
| The Hon. Jon Gerrard | Secretary of State (Science, Research and Development) (Western Economic Diversification) |
| The Hon. Douglas Peters | Secretary of State (International Financial Institutions) |
| The Hon. Martin Cauchon | Secretary of State (Federal Office of Regional Development-Quebec) |
| The Hon. Hedy Fry | Secretary of State (Multiculturalism) (Status of Women) |

# SENATORS OF CANADA

## ACCORDING TO SENIORITY

(October 1, 1996)

| Senator | Designation | Post Office Address |
|---|---|---|
| THE HONOURABLE | | |
| John Michael Macdonald | Cape Breton | North Sydney, N.S. |
| Orville Howard Phillips | Prince | Alberton, P.E.I. |
| Andrew Ernest Thompson | Dovercourt | Kendal, Ont. |
| Herbert O. Sparrow | Saskatchewan | North Battleford, Sask. |
| Richard James Stanbury | York Centre | Toronto, Ont. |
| William John Petten | Bonavista | St. John's, Nfld. |
| Gildas L. Molgat, Speaker | Ste-Rose | Winnipeg, Man. |
| Edward M. Lawson | Vancouver | Vancouver, B.C. |
| Mark Lorne Bonnell | Murray River | Murray River, P.E.I. |
| Bernard Alasdair Graham | The Highlands | Sydney, N.S. |
| Raymond J. Perrault, P.C. | North Shore-Burnaby | North Vancouver, B.C. |
| Maurice Riel, P.C. | Chaouinigane | Montréal, Qué. |
| Louis-J. Robichaud, P.C. | L'Acadie-Acadia | Saint-Antoine, N.B. |
| Jack Austin, P.C. | Vancouver South | Vancouver, B.C. |
| Paul Lucier | Yukon | Whitehorse, Yukon |
| Pietro Rizzuto | Repentigny | Laval-sur-le-Lac, Qué. |
| Willie Adams | Northwest Territories | Rankin Inlet, N.W.T. |
| Peter Bosa | York-Caboto | Etobicoke, Ont. |
| Stanley Haidasz, P.C. | Toronto-Parkdale | Toronto, Ont. |
| Philip Derek Lewis | St. John's | St. John's, Nfld. |
| Dalia Wood | Montarville | Montréal, Qué. |
| Reginald James Balfour | Regina | Regina, Sask. |
| Lowell Murray, P.C. | Pakenham | Ottawa, Ont. |
| Guy Charbonneau | Kennebec | Montréal, Qué. |
| C. William Doody | Harbour Main-Bell Island | St. John's, Nfld. |
| Peter Alan Stollery | Bloor and Yonge | Toronto, Ont. |
| Peter Michael Pitfield, P.C. | Ontario | Ottawa, Ont. |
| William McDonough Kelly | Port Severn | Mississauga, Ont. |
| Jacques Hébert | Wellington | Montréal, Qué. |
| Leo E. Kolber | Victoria | Westmount, Qué. |
| Philippe Deane Gigantès | De Lorimier | Montréal, Qué. |
| John B. Stewart | Antigonish-Guysborough | Bayfield, N.S. |
| Michael Kirby | South Shore | Halifax, N.S. |
| Jerahmiel S. Grafstein | Metro Toronto | Toronto, Ont. |
| Anne C. Cools | Toronto Centre | Toronto, Ont. |
| Charlie Watt | Inkerman | Kuujjuaq, Qué. |
| Leonard Stephen Marchand, P.C. | Kamloops-Cariboo | Kamloops, B.C. |
| Daniel Phillip Hays | Calgary | Calgary, Alta. |
| Joyce Fairbairn, P.C. | Lethbridge | Lethbridge, Alta. |
| Colin Kenny | Rideau | Ottawa, Ont. |
| Pierre De Bané, P.C. | De la Vallière | Montréal, Qué. |
| Eymard Georges Corbin | Grand-Sault | Grand-Sault, N.B. |
| Finlay MacDonald | Halifax | Halifax, N.S. |
| Brenda Mary Robertson | Riverview | Shediac, N.B. |
| Richard J. Doyle | North York | Toronto, Ont. |
| Jean-Maurice Simard | Edmundston | Edmundston, N.B. |
| Michel Cogger | Lauzon | Knowlton, Qué. |
| Norman K. Atkins | Markham | Toronto, Ont. |

ACCORDING TO SENIORITY

| Senator | Designation | Post Office Address |
|---|---|---|
| THE HONOURABLE | | |
| Ethel Cochrane | Newfoundland | Port-au-Port, Nfld. |
| Eileen Rossiter | Prince Edward Island | Charlottetown, P.E.I. |
| Mira Spivak | Manitoba | Winnipeg, Man. |
| Gerald R. Ottenheimer | Waterford-Trinity | St. John's, Nfld. |
| Roch Bolduc | Golfe | Ste-Foy, Qué. |
| Gérald-A. Beaudoin | Rigaud | Hull, Qué. |
| Pat Carney, P.C. | British Columbia | Vancouver, B.C. |
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(October 1, 1996)

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SENATORS BY PROVINCE AND TERRITORY

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