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THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Wednesday, October 2, 1996

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

Prayers.

NEW SENATOR

The Hon. the Speaker: Honourable senators, I have the honour to inform the Senate that the Clerk has received a certificate from the Registrar General of Canada showing that Wilfred P. Moore has been summoned to the Senate.

INTRODUCTION

The Hon. the Speaker having informed the Senate that there was a senator without, waiting to be introduced:

The following honourable senator was introduced; presented Her Majesty's writ of summons; took the oath prescribed by law, which was administered by the Clerk; and was seated:

Hon. Wilfred P. Moore, of Chester, Nova Scotia, introduced between Hon. Joyce Fairbairn and Hon. Alasdair B. Graham.

The Hon. the Speaker informed the Senate that the honourable senator named above had made and subscribed the declaration of qualification required by the Constitution Act, 1867, in the presence of the Clerk of the Senate, the Commissioner appointed to receive and witness the said declaration.

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, it gives me great pleasure to welcome the most recent addition to this house, Senator Wilfred Moore.

Since 1974, when Senator Moore first entered the political arena as a Halifax alderman, he has put his vigour and his talent into serving the people of his city and the province of Nova Scotia. He does so with the same kind of zeal as our colleague Senator Graham, who claims some credit for Senator Moore's early involvement in political life.

• (1340)

Senator Moore received his Bachelor of Commerce degree from Saint Mary's University and served on the board of that institution. He graduated with a law degree from Dalhousie University, which led him into the profession he continues to practice today.

His career has been marked by public service. He not only served as an alderman, but as chair of the Social Assistance Appeal Board for Halifax and Dartmouth and head of the Halifax Metro Centre.

In 1994, Premier John Savage asked Senator Moore to serve as chairman of the *Bluenose II* Preservation Trust. He and a dedicated group of volunteers oversaw the work that restored the *Bluenose II* to her full glory as a replica of the original ship that defeated all challengers in sailing championships on the high seas. There is that kind of spirit, we find, in our new senator.

He has made a significant contribution to politics throughout his life. I personally came to respect his commitment when I worked with him during the last federal election. For him, the democratic process is fundamental, politics is an advocacy of pride, and his participation has always been accompanied with determination and great good humour. In Senator Moore, the people of Nova Scotia will have an active, dedicated and outspoken representative who will never hesitate to champion their interests.

On behalf of your new Senate colleagues, I welcome you, Senator Moore. We look forward to your vigorous participation. We also welcome your wife Jane, who is in the gallery, to share with you the celebrations of this special day.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, once again we have the pleasure of welcoming a new colleague who, among his many community activities, has been very active on behalf of the Liberal Party in his province.

As I mentioned in the case of Senator Mercier last week, there are always those who stand up in great righteousness to deplore the fact that Senate appointments are sometimes given to those who happen to support the Prime Minister of the day and his party. Such comments, however well-intentioned, indicate a lack of understanding of our parliamentary system. The Senate is a political house — though hopefully not too much of a partisan one. Any member who brings to it a political experience, as does Senator Moore, gained at whatever level, has an advantage that can be of benefit to all of his colleagues.

Senator Moore also brings here two qualities: those of prudence and discretion, since, unlike the case of Senator Whelan, I cannot find any writing of his which I could appropriately quote today in my welcoming remarks.

That being said, Senator Moore, my colleagues on this side join with me in expressing to you all best wishes as you assume your new responsibilities.

Hon. B. Alasdair Graham, (Deputy Leader of the Government): Honourable senators, when the magnificent *Bluenose II* sailed proudly into Halifax Harbor at the time of the G-7 summit, white sails leaning grandly in the wind, no one could have been prouder or have taken more credit for the moment than our new colleague, Senator Wilfred Moore.

We have already been told that Wilfred Moore was chairman of the *Bluenose II* Preservation Trust. What has not been said is that he created the trust, he recruited for it, he was its driving force, and he, more than anyone else, was responsible for the spectacular reincarnation and preservation of this billowing tower of sail of which Nova Scotians, indeed all Canadians, are so proud. I believe it is safe to say that without the leadership and determination of Senator Moore, *Bluenose II* would not be sailing today, or perhaps ever again.

Probably very few of those who were so thrilled at the sight of the restored “maiden of the sea” knew that her name is believed by many to emanate from the MacIntyre Blue potatoes, the shipments of which, to places like the New England States, were invoiced as “blue noses.” The beautiful vessel which so gracefully tacked all the oceans of the world, some say, was named after the lowly tuber; undistinguished, it is true, but essential to the diets and sustenance of millions of families and communities. Of course, most people would identify the first *Bluenose* as the fastest fishing schooner afloat.

Regardless of the origins of the name, we can surely find some significance here in that Senator Moore has remained so close to his roots — to the people and the communities he loves. He has spent most of his life in service to ordinary Canadians and to their families.

However, Senator Moore is much more than a former chairman of the Social Assistance Appeal Board in Halifax and Dartmouth, deputy mayor of Halifax, chairman of the Metro Centre, or member of the board of Saint Mary’s University. He is a man who, in today’s vernacular, walks the talk. A man of strong beliefs, we will soon learn around here that he is not afraid to express his convictions.

Senator Moore brings to this chamber a fierce loyalty to the traditions and proud inheritance of this country which the times demand now more than ever. Equally important is his service to people and families and communities, because that is where the real meat and potatoes of our nationhood come from.

His presence in this chamber will remind us, on a daily basis, that this magnificent Red Chamber is, in reality, a workshop that serves people, the highest honour and privilege which any of us can hope for in life.

The warmest of welcomes to a friend and fellow Nova Scotian, to his wife Jane and to his family.

Willy, as an aside, it will put new interest in the game for both of us when Saint FX and Saint Mary’s tangle once again on the football field later this season.

Hon. John Buchanan: Honourable senators, here we are welcoming another Nova Scotian to this historic Red Chamber. I warn every one of you that we Nova Scotians, led by people like Senator Moore and myself, are about to take over this chamber completely!

I congratulate my friend on his appointment to the Senate and most certainly on the restoration of our beloved *Bluenose II* in Nova Scotia.

Senator Graham mentioned the name “Bluenose.” The origin of the name “Bluenose” is shrouded in history, and he is very close when he talks about the Bluenose potato. I heard a story once from an old salt in Sambro, and I am always amazed at the twists and turns these stories can take.

Whenever I was in Boston back through the 1980s, I would always arrange for the *Bluenose* to come along. We would take out business people and others involved in tourism promotion with Nova Scotia for a sail in Boston Harbour. While talking to a young lady aboard the *Bluenose* during one of these trips, she asked, “Where did the name ‘Bluenose’ come from?” I did not know who she was, but she kept taking notes. I said, “You are taking notes.” “Oh, yes,” she said, “they are for my own use.” I said, “The origin of the name ‘Bluenose’ is rather shrouded in history.”

However, the story that I like best is the story that, back in the 1920s and 1930s, when the original *Bluenose* was on the Grand Banks for days at a time in very cold winter, the seamen of the day wore heavy, blue wool sweaters. When they would get the sniffles, they would rub their noses with their sweaters. By the time they got back to shore, their noses would be blue, and so they gained the nickname ‘bluenosers’.

• (1350)

I could not believe it when, about two weeks later, a mutual friend of Willy’s and mine, Freddie Dickson, asked me what I had said in Boston about the *Bluenose*. When I replied, “I don’t know,” he said I had better read the *Cape Breton Post* and the Lunenburg papers because they were crediting me with the story that the name “Bluenose” came from the seamen and their wool sweaters. The author of the story was a *Gloucester Times* reporter in Massachusetts.

Perhaps some other honourable senator will know exactly why it is called the *Bluenose*, but that is one of the stories that is around, and it is a rather nice one.

I should like to welcome Senator Moore, a distinguished member of the bar of Nova Scotia. Over the years, all of my legal dealings with him have been cordial, professional and pleasing. It was my honour to be able to sign, in 1983, the Order in Council that appointed Wilfred Moore as Queen’s Counsel, one of Her Majesty’s counsel learned in the law. Politics had nothing to do with it at all. It was because he was, and he continues to be, a distinguished member of the Nova Scotia bar.

As has been said, Wilfred Moore was a distinguished member of the Halifax City Council, an alderman, a deputy mayor. I have a good memory, and I remembered a certain picture that had been taken 20 years ago. I found it here in the Parliamentary Library. In this picture, the Mayor of Halifax looks on as Her Majesty the Queen signs the guest book at Halifax City Hall. In the background, His Royal Highness Prince Philip chats with Alderman Wilfred Moore.

I would ask one of the pages to deliver this copy of that picture to our new and distinguished colleague, Senator Moore.

Senator Moore has long been a friend of mine, and I know him affectionately as “Willy,” though I call him that today perhaps for the first and last time in this chamber. I have been here for a while but I am not sure if honourable senators are allowed to address each other by their first names. In our provincial legislature where I worked for 24 years, that familiarity was discouraged. This, then, will be the first and last time that I do so in this chamber, but I do wish to extend a very sincere welcome to my friend Willy Moore — Senator Moore — as he joins us in this historic Red Chamber.

I would also welcome his dear wife Jane and their family.

Hon. Sharon Carstairs: Honourable senators, when you are born in the same year in Halifax, and you grow up in the same neighbourhood and go to the same schools, you do not know someone as Senator Wilfred Moore; you know him as “Willy.”

Senator Wilfred Moore went to school with my brother David, and served on the same city council as my brother Dennis. There was a Connolly gathering in Fredericton last weekend, as one more of the generation was married. We all sat around at brunch on Sunday morning and gave a new toast to the new senator, Wilfred Moore.

From the entire Connolly family, Willy, welcome to the Senate.

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, I do not have the honour of knowing Senator Moore. On behalf of independent senators, I extend to him a most cordial welcome.

[*English*]

I do not have the honour of knowing the new senator, but he must be very special to have won over such great competition as we read about in the paper every day.

Nothing would please me more than to know you, Senator Moore — the sooner the better — and to tell you that if you ever feel depressed, or fed up with the majority, or with partisanship, there will always be room for a new independent senator.

[*Translation*]

THE LATE HONOURABLE ROBERT BOURASSA, B.A., L.L.B., M.A.

TRIBUTES

Hon. Lise Bacon: Honourable senators, in paying tribute to a great Quebecer and a great Canadian, I will keep my remarks short and simple, as he would have wished. Quebec's former premier, Robert Bourassa, served Quebecers of all stripes well, with unwavering determination and loyalty.

As a public figure, Robert Bourassa worked for close to three decades to build a modern, strong, proud and Canadian Quebec.

Trained as an economist, he knew that it was, and still is today, a priority for Quebec to make its mark in the world economy if it is to prosper. He knew that, with a healthy economy, Quebec could afford generous cultural and social policies and a better quality of life.

For over 30 years, I shared with him the political life of Quebec, with all that that meant in the way of risks, and challenges too. I always admired his ability to take the necessary decisions, sometimes in difficult circumstances, without letting his personal concerns get in the way for an instant.

Robert Bourassa does not just leave us with memories; he has bequeathed us a heritage. The best tribute we can pay him is to carry on his political vision of a Quebec that will always have a place in Canada.

To Andrée Bourassa, who always supported him in his work, to his children François and Michèle, I offer my sincerest condolences and my friendship.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, the death of any political figure, whatever his affiliation, always causes great sadness to those working in the same field, but this sadness is all the more profound when the deceased was known to them in private life.

I knew Robert Bourassa at the Collège Jean-de-Brébeuf. We occasionally met when I was a member of the Montreal municipal council and he was newly elected to the National Assembly. Subsequently, we ran into each other during extremely contentious labour disputes in Montreal. These led to meetings with him and his advisors that were not always easy — far from it.

I will leave it to others to tell us about Robert Bourassa, the public figure. Today I mourn Robert Bourassa, the man, fellow student and long time acquaintance.

[*English*]

While Robert Bourassa projected an image of detachment, indeed remoteness, his true character was the total opposite; he was warm, with a fine sense of humour. He was a devoted family man, and always had a deep concern for the personal welfare of all, friend and foe alike. He carried out his arduous responsibilities with complete disregard for his own well-being.

He was an outstanding citizen of his country, and of his province, for he had a deep attachment to both. He is a great loss to all Canadians and the loss of Robert Bourassa is a particularly sad one to all of those who had the privilege of knowing him. I can only hope that his widow and his family will find some consolation in the knowledge that their grief is shared by so many. They have my deepest sympathy.

[Translation]

• (1400)

Hon. Lowell Murray: Honourable senators, I simply want to pay a personal and most respectful tribute to Mr. Bourassa's memory. For five years I had the opportunity to appreciate his dedication to a noble enterprise: Quebec's reconciliation with the rest of Canada. This great challenge was the Meech Lake negotiations, to which Mr. Bourassa devoted most of his last two mandates as premier.

I especially remember his sorrow and deep disappointment at the 1990 failure of the Meech Lake Accord, when we failed to find a solution to the problem arising from the 1982 patriation of the Constitution without Quebec's consent. We were unable to establish a constitutional framework that would have allowed Quebec to grow as a distinct society within the Canadian Confederation.

Mr. Bourassa then fervently hoped that we would turn the page on the Constitution and devote our efforts to turning the economy around. He feared that, otherwise, the feeling of frustration kindled by Canada's ailing economy would help the sovereigntists' cause. Unfortunately, it seems he was right.

Honourable senators, history will be the ultimate judge of Robert Bourassa and his work. I am confident history will prove him right. He was a man of vision, a statesman of exceptional skill and great insight.

I remember that, during the final round of talks on the Meech Lake Accord at the Ottawa Conference Centre in June 1990, Mr. Bourassa looked at the other first ministers around him and said: "I know that some of you are reluctant to support the Meech Lake Accord for political reasons, but, believe me, this is nothing compared to the kind of political upheaval Canada will have to go through if this accord fails."

Today, I wish to convey my sincere condolences to his family, of course, as well as to some of our Senate colleagues who are particularly saddened by the untimely death of their former leader.

I am thinking in particular of his former Deputy Premier, the Honourable Lise Bacon, his former minister, the Honourable Thérèse Lavoie-Roux, the former Secretary General of the Quebec government, the Honourable Roch Bolduc, and especially his very close friend and colleague, his political advisor, the Honourable Jean-Claude Rivest.

Through his many achievements as well as his failures, which we all share, Robert Bourassa can teach us some valuable lessons.

Hon. Louis J. Robichaud: Honourable senators, while I have nothing against doing it, I am definitely not crazy about paying tribute to those of us who are forced to retire at the age of 75, or to friends who have passed away.

The passing of a colleague I knew very well when he was premier has been on the news all day on radio and television. Robert Bourassa was a great Canadian as well as a great Quebecer.

Robert Bourassa had many qualities. The press and the media will tell you all about it. I need not play that role today. I would just like to say a few words about how life goes on.

In my short life, I have seen a succession of premiers in Quebec: Maurice Duplessis, Adélard Godbout, Paul Sauvé, Antonio Barrette, Jean Lesage, Daniel Johnson, Jean-Jacques Bertrand, Robert Bourassa, René Lévesque, Pierre-Marc Johnson, Daniel Johnson junior, Robert Bourassa, Jacques Parizeau and Lucien Bouchard. In my short life, I have known all these men to speak to.

As I indicated, Robert Bourassa was a great Canadian, a unifying force the likes of which we have too few. I would like to see more people like him in Quebec and elsewhere.

I remember particularly Robert Bourassa's courage when his colleague and great friend Pierre Laporte was assassinated. He was Pierre Laporte's big boss. He was a great friend of his, but like a good, strong Canadian and Quebecer, he managed the crisis.

• (1410)

Perhaps I could share with you this little incident that happened immediately after the funeral of Pierre Laporte, in Montreal, in the presence of then Mayor Jean Drapeau, Lucien Saulnier, Drapeau's right hand man, Robert Bourassa and Prime Minister Pierre Elliott Trudeau. I was also present because provincial premiers and attorneys general had been called to a meeting. Robert Bourassa said:

Steps must be taken to stop what is happening in Quebec right now.

All of us agreed. What came of that, unfortunately, were the war measures.

I had, and still have, a great deal of admiration for Robert Bourassa's career. I would like to extend my deepest condolences to his wife Andrée and to his children and grandchildren. I hope they will remember their husband, their father and grandfather with as much emotion as I always do.

Hon. Thérèse Lavoie-Roux: Honourable senators, it is with deep emotion that I rise today to pay tribute to a man of great courage and exceptional dignity.

Everyone knows Mr. Bourassa as the economist and the premier who cared tremendously about Quebec's economic development and prosperity. He always had but one objective: to ensure Quebec's prosperity, so that the province's economic development would promote the well-being of all his fellow citizens.

However, people tend to forget — because no books were written about it — Mr. Bourassa's contribution to Quebec's social development. Quebec's medicare system, as we know it, was established under Mr. Bourassa. The most significant changes in the education sector, with what was then called the democratization of education, also took place under him.

All these changes came about during the period referred to as the quiet revolution. It is Mr. Bourassa who brought these initiatives to completion.

I worked with him mostly on social issues, including health, social services and education matters. I can tell you that, under any circumstances, he was a great listener and he had a deep feeling for the problems that confronted ordinary people, particularly those of an economic nature. I always felt that his fellow citizens came first and he never strayed from this principle, trying to give all Quebecers the best possible quality of life.

As for his political life, I simply want to briefly discuss the constitutional issue — everyone knows I am not an expert on this matter. Some wondered whether or not Mr. Bourassa was a true federalist. I will only say that, had it not been for Robert Bourassa, Canada would already be divided.

The discussions concerning the Meech Lake Accord and the Bélanger-Campeau commission are but a few of the numerous problems he had to deal with. Even then, some tried to sway Mr. Bourassa. Had he gone for sovereignty, he would have made history by becoming the man who created a new country. However, Mr. Bourassa always believed that Quebec's future would be best protected within Canada. He never yielded to any pressure; on the contrary, he always fought for our country's integrity. He was always a great Quebecer and a great Canadian.

The dramatic events he experienced when Meech Lake failed — pointing no finger of blame at anyone, we may well wonder where we would be today if it had gone through instead of always having to start over again on an issue so crucial to our future.

We must, I think, acknowledge that we have Mr. Bourassa to thank for our still being here today. There are many other comments that could be made on Mr. Bourassa's accomplishments. It was during his time as premier that the National Assembly adopted the Charter of Human Rights and Freedoms, as well as numerous other measures responsible for the social progress Quebecers made during the Bourassa years.

Everyone in Quebec recognizes it today. Just now I was speaking to Mrs. Solange Chaput-Rolland, who used to sit in this House. She told me: "I am sad. I am sad, but everyone in Quebec is sad today."

Mr. Bourassa, we shall try to pick up where you left off, to continue everything you have done for so many years with so

much devotion, self-sacrifice and vision for the future of your fellow citizens.

Mrs. Bourassa also sacrificed herself to a certain extent during all those years and had to bow to the demands of political life. She, too, did it for the good of Quebec. My heartfelt condolences to her and to their children.

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, today Canada and the province of Quebec have lost a remarkable citizen in the person of Robert Bourassa.

He devoted his life to the service of his beloved province and of Canada.

[English]

Certainly we in this place know the rigours and the challenges of political life and we also know that being elected Premier of Quebec no less than four times is a remarkable achievement in itself. He was also, at the age of 36, the province's youngest premier.

As I listened to the emotional and strongly felt remarks today, I took to heart Senator Robichaud's recollection of the shocking death of Mr. Bourassa's good friend Pierre Laporte. It reminded me that it was just 26 years ago, almost within a couple of weeks, that I had my first conversation with Robert Bourassa. It was on that fateful Saturday night, shortly after we had received the news of the death of Mr. Laporte, that he called to share his thoughts and his suggestions with the Prime Minister of the day, Mr. Trudeau. I was the person who was there to speak with him. Those were times that tested people in political life throughout this country and, I am certain, seared on the collective psyche the reality of the responsibilities, pressures and risks that are involved in taking on those responsibilities.

Mr. Bourassa's stature as one of Quebec's political icons was not diminished by his retirement in September of 1993. Indeed, his views were constantly being sought and often given generously.

Prime Minister Chrétien has already spoken today of Mr. Bourassa's contributions and of his abiding love of politics. I would reiterate those sentiments, and add my voice to the many tributes that we will be hearing in the days ahead.

• (1420)

Honourable senators, one of the measures of his influence is that there are few political books of our times that do not, to some degree, speak of his proximity and involvement in so many of the major political events in the last quarter of a century. He was instrumental in ensuring that Quebecers had full access to health, social and educational services that would help to move the province forward with hope and pride and confidence. As many have said, his constitutional role is part of our modern history.

[Translation]

His last words in the Quebec National Assembly in 1993 were to celebrate Canada and invite Quebecers to remain in Confederation. I quote:

Prudence is second nature to us. We are not a nation of martyrs. If our situation were untenable, perhaps risking the break-up of the federation would be justified. However, that is not the case, and we know it. We also know that we can act.

[English]

In his political life, he did not shy away from the tough issues. He was a fierce fighter. At the same time, he has been thought an enigmatic figure in public. It is a tragedy that his final days and years in public life were shadowed by his battle with cancer, but he faced that challenge with characteristic strength and great courage.

In private, his time was for his family: his wife Andrée, his children, François and Michèle, his grandchildren, Mathieu and Simon, who will miss him so. Their loss is shared by the people of Quebec, for whom he cared so much, and by Canadians across this land.

Hon. John Buchanan: Honourable senators, I was privileged to know Robert Bourassa for some 20 years. As with all who knew him, I am saddened by the death of this husband, father, superb politician, economist, and certainly one of the great premiers of our time.

Robert Bourassa and I became fast friends over the years, as both Senator Lavoie-Roux and Senator Bacon know. He was a very private man, a rather shy individual at times, but when one knew him well he was probably one of the most personable, warm individuals that I have ever known, and in every respect a gentleman. I was honoured to sit with him at federal-provincial conferences, premiers' conferences, conferences of the Atlantic premiers and New England governors. Whether it was a conference on the economy, the Constitution, interprovincial trade, trade with the United States, or relations with the United States, his contributions were always positive, welcomed, and always well thought out.

To give you a measure of the man, in Nova Scotia, at the closing banquet of the premiers' conference in Halifax in 1987, I introduced the Canadian premiers. When I arrived at Robert Bourassa, I introduced him as the architect of a new era in Canada, the man who brought his five points to the premiers' conference in 1986, which were unanimously accepted by all premiers, and which were, in 1987, unanimously accepted and initiated by all premiers and the Prime Minister at Meech Lake. I called Robert Bourassa a staunch Quebecer; a fervent Canadian. He received, on that occasion, a long, loud, standing ovation. The mark of the man was that, when he stood up, he

looked over at me and said, "I think you went a little bit overboard." His contributions to Canada will not be forgotten.

Honourable senators, one of the things I remember on the personal side of Robert Bourassa was something that I noticed at the first federal-provincial conference at which he and I participated. I noted immediately, as is known to many who knew him well, that he loved to drink milk. He always had a fresh glass of milk in front of him. As a milk drinker myself for many years, I realized then that I would not feel alone when I also had a glass of milk in front of me at these conferences.

Honourable senators, Robert Bourassa will be sadly missed in the province of Quebec; he will be sadly missed throughout Canada, and sadly missed by all who knew him well.

On my own behalf and that of my wife Mavis, I extend our deepest sympathies to Madame Bourassa and the family.

Hon. Nicholas W. Taylor: Honourable senators, I wish to refer to a personal memory of Robert Bourassa.

As pointed out by Senator Lynch-Staunton, Robert Bourassa was a warm and kind individual. Many people, especially we in the West, did not see that image come across. I was the leader of a political party for nearly 14 years, namely the Liberal Party in Alberta. Whenever Mr. Bourassa came out to our side of the country, he would always take a moment to talk, whether I was leading no seats in the house or a number of them. We would have a chat, and perhaps even dinner. Those occasions meant a lot to me, arising as they did out of his kindness, attention and interest in Liberalism, especially when I recollected that there were many other people of the same political faith who, once they had moved up the ladder, were too busy to drop in to visit someone who led only one seat, or perhaps no seats, in Alberta. Mr. Bourassa, whether or not he had a 102-seat majority, always had time to talk with me and inquire about what was going on, not only with my family but with Alberta as well.

Mr. Bourassa's sense of social conscience, which Senator Lavoie-Roux emphasized, is something of which most westerners may be unaware. I remember the occasion a number of years ago when Mr. Bourassa had one of his bouts with cancer, the daily papers in Calgary and Edmonton carried a cartoon of a beaver with a get well card under his arm, knocking on a door marked "Robert Bourassa." That showed the attitude of many westerners.

Although we have argued back and forth many times about where Quebec's place is within Confederation, there was always a realization that this was a man with tremendous insight, tremendous courage, and one who was a Canadian, first and foremost.

I know there is very little I can say to ease the sense of loss that his family, wife and grandchildren must have, but I hope they take some consolation in the fact that literally hundreds of thousands of Canadians feel that Canada is a much better country for Robert Bourassa having been a part of it.

[Translation]

Hon. Roch Bolduc: Honourable senators, I knew Mr. Bourassa more than 30 years ago. At the time, in 1963-64, he was a young economist working on the provincial commission on taxation chaired by Mr. Marcel Bélanger. Later I saw him as a young member of the National Assembly and finally as a young premier.

• (1430)

He was a gentleman, very courteous to everyone he met and also very considerate of his staff. His background in law and political economics served him well when dealing with issues of public policy. He loved to talk about public finances, and he was as comfortable with fiscal issues as he was with budgetary problems.

A very intelligent student of human nature, he had a talent for persuasion that revealed a lively intelligence, good judgment and a good sense of humour.

Mr. Bourassa did not say “no” very often, but everyone had to interpret the shades of meaning in what he said. He also had an almost natural aptitude for the tolerance that professional politicians develop sooner or later for the attitudes and behaviour of their colleagues in the political arena.

He was a nationalist, like many people in Quebec, but a moderate; in other words, a reasonable man. A degree of detachment also gave him the ability to take the broader view. For instance, he quickly realized that economic globalization was becoming a factor in the eighties and that, for the Canadian economy and for all Canadians, a free trade agreement with the United States would be preferable to protectionism.

He showed great consistency in Quebec’s historical quest for a more decentralized Canadian federation, which is the only way, as I see it, that Quebec can be content within Canada.

He sometimes had fun with reporters, as he did during Question Period in the National Assembly, where he became a clever and remarkable parliamentarian.

Fourteen years as Premier of Quebec is quite something. However, his natural wisdom enabled him to appreciate the limits of power and politics. Pressed to defend a position that was difficult for the government to take, because it is always easier when you are in the opposition, he often drew on a store of witty repartee, adding his wry smile and a touch of irony on occasion. This was his favourite weapon against opponents who were apt to show their frustration or inexperience with a certain lack of finesse.

I will remember him as a man who was very human and very modest, and also as a man with a unique dedication to public service.

On behalf of my wife and myself, I wish to extend to Mrs. Bourassa my sincere condolences.

Hon. Gérald-A. Beaudoin: Honourable senators, Robert Bourassa helped shape the history of Quebec and Canada. He lived through some great moments in our recent constitutional history, often as Quebec’s main player. There was a constant in his life: he was a proud Quebecer, but he also wanted Quebec to stay in the Canadian federation.

His work will be analyzed by historians. He lived in a time of upheaval: the 1970 October Crisis, the Victoria Charter, the first attempts to patriate the Constitution. He leaves behind some remarkable achievements: James Bay, of course, the Quebec Charter of Human Rights, and medicare.

After his return to power in 1985, he became involved in numerous initiatives: the Meech Lake Accord, the Bélanger-Campeau commission, the Charlottetown Agreement, and let us not forget free trade, which he strongly supported.

No other Quebec Premier had such an eventful career. He remained in office for a long time. He was elected Premier of Quebec a total of four times. He made a comeback in 1985. There are few precedents like this. He was one of a kind.

I was lucky enough to meet him in law school at the University of Montreal. He was always first in his class. He worked in the federal public service in Ottawa for a while. His life’s great ambition was to be active in politics. He was a lawyer and an economist. He was certainly one of our great figures. He was an affable, courageous, dedicated man and, above all, a great democrat. I saw him at work at the major constitutional conferences. I think he was an exceptional legislator and premier. He knew Quebec’s soul well.

We need to stand back to properly assess a man who was premier for so long. Mr. Bourassa favoured a flexible, cost-effective federalism. He was, without contradiction, a great figure.

Quebec owes him a great deal.

To his wife, Andrée, his children, his grandchildren, his family and friends, I convey my deepest sympathy. Quebec is in mourning. Canada has lost a very skilled politician.

Hon. Marcel Prud’homme: Honourable senators, I would prefer to wait a little while before paying tribute to Robert Bourassa, whom I have known for over 30 years.

I, however, offer my deepest sympathy and my prayers to his wife, Andrée, and his family, whom I know well.

[English]

ROUTINE PROCEEDINGS

EMPLOYMENT INSURANCE (FISHING) REGULATIONS

On Tabling of Documents:

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, in response to Senator Comeau, I am tabling today some of the information that he had requested in the last few days on EI regulations involving the fishery. The list is not as complete as requested because representatives in the industry, as well as individuals in Atlantic Canada, number over 100. We need more time to get all the names that he was interested in receiving from the regional offices.

The information that went out in July and again in September is being tabled today.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

ELEVENTH REPORT OF COMMITTEE TABLED

Hon. Colin Kenny, Chairman of the Standing Committee on Internal Economy, Budgets and Administration, tabled the eleventh report of the Committee, regarding the Budget of the Standing Committee on Privileges, Standing Rules and Orders for the fiscal year ending March 31, 1997.

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

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO PERMIT COMMITTEE TO STUDY
EMPLOYMENT INSURANCE (FISHING) REGULATIONS

Hon. Gérald J. Comeau: Honourable senators, I give notice that on Thursday next, October 3, 1996, I will move:

That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine the Employment Insurance (Fishing) Regulations made under section 153 of the Employment Insurance Act and approved on September 17, 1996, and any matter relating thereto; and

That the Committee present its report no later than November 30, 1996.

TRANSPORT AND COMMUNICATIONS

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

Hon. Richard J. Stanbury: Honourable senators, on behalf of Senator Bacon, I give notice that on Thursday next, October 3, 1996, she will move:

That the Standing Senate Committee on Transport and Communications have power to sit at 3:30 p.m. on Wednesdays for the duration of its study on Canada's international competitive position in communications generally, including a review of the economic, social and cultural importance of communications in Canada, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

QUESTION PERIOD

DELAYED ANSWER TO ORAL QUESTION

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, I have a response to a question raised in the Senate on June 5, 1996 by the Honourable Senator Di Nino regarding the ratification of the Organization of American States Convention.

HUMAN RIGHTS

SIGNING OF CONVENTION OF ORGANIZATION OF AMERICAN
STATES—GOVERNMENT POSITION

(Response to question raised by Hon. Consiglio Di Nino on June 5, 1996)

The Government is vigorously pursuing its legislative review and consultations with the provinces and territories, with a view to acceding to the American Convention on Human Rights at the earliest possible time.

This Government takes its international human rights obligations very seriously. That is why it is giving very careful consideration to the Organization of American States Convention.

ORDERS OF THE DAY

JUDGES ACT

BILL TO AMEND—SECOND READING

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.—*(Speaker's Ruling).*

The Hon. the Speaker: Honourable senators, yesterday during debate on the second reading of Bill C-42, an Act to amend the Judges Act and to make consequential amendments to another Act, a point of order was raised asking for a ruling from the Chair. Senator Kinsella asked me as Speaker to determine whether Bill C-42 is a public or a private bill. He made this request following remarks of Senator Cools in which she

suggested that there were elements of the bill that seemed to be essentially of a private bill nature. In supporting the request of Senator Kinsella, Senator Cools asked that the comments she had made during second reading debate be taken into consideration. She also suggested that I read an article that appeared in a newspaper. In addition, Senator Kinsella also asked me to assess whether the bill impinges any part of the Constitution.

[Translation]

I have reviewed these statements, as well as earlier comments made during second reading debate, examined the bill and studied the relevant authorities and am now prepared to rule on Senator Kinsella's point of order.

Basically, the question before us seems to be one of definitions: What is a public bill and what is a private bill? Citation 623 of Beauséne's, 6th edition at page 192, states that:

[English]

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. A bill designed to exempt one person from the application of the law is a private bill and not a public bill.

[Translation]

And at citation 1053 (page 285-6), Beauséne's further explains that:

Private legislation is legislation of a special kind for conferring particular powers or benefits on any person or body of persons, including individuals and private corporations, in excess of or in conflict with the general law.

[English]

From these definitions, it is clear to me that in order for Bill C-42 to be viewed as a private bill, it must be the case that its provisions do not relate at all to public policy, but rather confer particular benefits on certain individuals or provide an exemption from the general law. To assess this issue, it has been necessary for me to review the provisions of the bill. I also read the statements made by Senator Cools and the remarks of Senator Bryden, who is the sponsor of the bill, and the comments of Senator Berntson, who spoke in reply when the motion for second reading was first moved on June 19.

Based on the debates thus far, it seems evident that Bill C-42 is attempting to accomplish a number of objectives: One, it establishes a mechanism to permit judges to apply for a leave of absence without pay in order to participate in international activities or international technical assistance programs under certain conditions. Two, Bill C-42 transfers from the cabinet to chief justices the authority to approve leaves of up to six months. Three, it permits the appointment of a judge to the Ontario Court of Appeal and of two judges to the British Columbia Court. Four, the bill adds the Chief Justice of the Courts Martial Appeal Court to the membership of the Canadian Judicial Council. Finally, the bill also makes a change with respect to the annuity entitlements of judges in certain circumstances and provides for

representational allowances to the Chief Justice of the Courts Martial Appeal Court as well as the Chief Justices of the Yukon and Northwest Territories Courts of Appeal. While some of these changes may relate at the moment to identifiable individuals, they are designed to have lasting application; consequently, they are not in any way an exemption from the general law, but a change to it. Given this interpretation, it seems clear to me that Bill C-42 is a public bill, and not a private one.

In addition, I refer honourable senators to citation 1055 of Beauséne's at page 286 for an explanation of the four principles used to determine whether a bill introduced as a private bill should in fact be treated as a public one. Applying the appropriate principles to this particular bill in order to evaluate its public or private character, I believe that my assessment of Bill C-42 as a public bill is confirmed. As I have already indicated, its subject-matter relates to public policy; it also proposes to amend or repeal a public act; and it has as its object what is essentially a public matter.

Accordingly, I must conclude that Bill C-42, which was introduced in the other place by a minister of the Crown as a matter of public policy and with a Royal Recommendation attached to it, is a public bill.

With respect to the second question asked by Senator Kinsella, whether or not this bill impinges upon provisions of the Constitution Act, I must reply that by long established tradition and practice the Speaker generally refrains from any involvement in constitutional or legal questions. In support, I would refer honourable senators to citation 168(5) in Beauséne's at page 49 where it is stated that:

The Speaker will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or a question of privilege.

Debate will now resume where we left off yesterday.

The Hon. A. Raynell Andreychuk: Honourable senators, having sat as a judge, I am well aware of the importance of the issue of judicial independence to judges. The question of their distance and their ability to act independently from the government has been the cause of discussion and debate for decades. Also, the role of the chief judge is very important to judges.

I rise today to talk not so much about judicial independence for the benefit of judges as for the benefit of the public. We need to have a judiciary that is independent from the government and independent in the minds and actions of judges in order to protect the public. We must be reassured in a democratic state that those of us who come before the courts will get a fair hearing. The issue of judicial independence has been discussed in Canada and, commendably, we have moved to ensure that judicial independence is well in place.

• (1450)

Over the decades, we have moved towards judicial scrutiny by peers and by the public. We have also moved to have the appointment of judges scrutinized by a judicial appointments process, which takes into account both peer influence and peer judgment, based not only on public opinion but also on the quality and the aptitude of a person to sit as a judge.

This process has also removed judicial appointments from patronage to some extent. These actions have been taken, and have been taken wisely, to protect the independence of the judiciary. While I am not certain for what purpose this bill was put in place, I am certain that it cannot be treated as a housekeeping measure. While there may be some reasons to have judges sit on international tribunals and act in an international environment, we must do it cautiously, and never at the expense of judicial independence.

At first blush, in this bill I see a return to the practice of having chief judges appoint people to sit on these international ventures without any other scrutiny or enabling provisions in place. This practice is questionable, and is different from that which we are attempting to establish with respect to judges on a national basis. Furthermore, for the Governor in Council to be given the power to make these appointments, without any statement concerning how and when, is a regressive step in respect to what we have been attempting to do within Canada. To have a judge acting off the bench in an international forum — no matter how laudable the reasons — is not any more credible than permitting him to sit in Canada on some national-interest issue.

Therefore, I cannot accept Bill C-42 as simply a housekeeping measure, and one that should go to second reading. If there is any implication that this act violates judicial independence or reduces the capability of a judge to act independently, we should not send it to second reading. Having sat as a judge — and knowing the pressures that public opinion, administration and government can place on a judge, or be seen to be putting on a judge — I cannot agree to that.

I do not believe that there are many cases in Canada where actual pressure or inappropriate methods are used, but the public cannot understand why Judge A gets a certain opportunity and Judge B does not. In such circumstances as this, when a judge speaks off the bench, is it possible for the public to understand which hat he or she is wearing?

It is very critical that judges have opportunities off the bench to further their knowledge and experience, as judiciaries across the world are doing, but we should do it cautiously and not blindly because, once lost, judicial independence cannot be regained.

I point to two clauses in Bill C-42. One talks about the judge being appointed to a tribunal or to duties in international fora. I have already discussed the proposed section wherein the chief judge may assign a judge for six months, but if it is beyond that, the government becomes involved; and I have discussed why I believe that to be wrong. There is also a peculiar section that says that a judge who has been granted leave of absence without pay may receive remuneration for that period from an international organization of states, or an institution of such an organization. I do not know of any principle in international law that defines such situations, and my mind boggles at the thought of the kinds of organizations with which a judge might be associated on international fora.

I have the highest regard for all of the judges in Canada, and I believe that most of them would choose wisely — both in regard to the organizations with which they might be associated and

with regard to the amount of remuneration that might be reasonable. However, it takes only one comment from one judge to taint the entire judiciary.

Honourable senators, it is very easy for the public to lose confidence in an institution. I cannot think of a time in the history of Canada when globalization so urgently brought the entire world to our doorstep. Therefore, any judge acting in any international forum must be mindful of what effect that might have on the judiciary as a whole, if or when he or she returns to the Canadian bench. Their comments, their points of view — expressed, however seriously or appropriately, within that forum — may be misinterpreted or misunderstood and carry an entirely different message within the national context.

I do not know whether or not the framers of this piece of legislation have seriously considered all of the ramifications of judicial independence. If they have, I hope that the Legal and Constitutional Affairs Committee will not be persuaded of the need to pass the bill in this form.

Therefore, I raise some of the issues. I also raise some of my own questions as to whether a judge can, or should, have the power to choose work off the bench without the scrutiny of anyone beyond a chief judge and the government of the day. If it is not a conflict, it certainly could be perceived as one, and something that might affect the fundamental fibre of our democracy.

There are two flaws that have not been addressed to my satisfaction: First, how does this bill strengthen judicial independence as opposed to weakening it? The bill does not reassure me in any way that, by passing it, we will be increasing the knowledge of and bolstering the good opinion of the public about the judiciary. However, even if we can overcome that first hurdle, I still do not believe that the actual clauses have been well thought out. I believe that the Judges Act was put in place after much discussion and much negotiation, not only with judges and academics in the legal field but also with many other people who come in touch with the courts on a daily basis. I do not believe that the proposed sections here have been well thought out nor have they the kinds of measures built into them that would preclude any abuses, or any perceived abuses in the public mind.

If this bill does go to second reading, I urge that those who have been involved with its framing be called upon to answer not only the question whether they have seriously considered that it is in our best interests internationally to participate in some of these ventures, but also the question of how such a measure can strengthen our democracy at home and our institutions. In fact, this bill seems to arise out of a priority on the part of CIDA, and a priority of this government in relation to our foreign policy in its efforts to strengthen democratic institutions. However, we cannot go into so-called Third World countries and talk about judicial independence as being the cornerstone of our democracies on the one hand, and then on the other pass such bills as Bill C-42 without the proper reflection and the proper safeguards that we would demand from any Third World country or new emerging democracy. We should not set a standard that is less for ourselves than we would set for anyone else.

I hope my comments will be helpful to the committee — that is, should the bill receive second reading and be referred to committee — in addressing fundamental issues within Canada and fundamental issues in relation to the reputation of Canada abroad when we engage in debate about strengthening democracies and democratic action.

Hon. Noël A. Kinsella: Honourable senators, before the debate is concluded at second reading, I should like to make a few comments because, generally, debate at second reading is on the principle of the bill. Based upon the debate that we heard yesterday, and again this afternoon, a number of principles have been identified that seem to be those upon which the main statute, the Judges Act, operates, and which are at least contrary to the principle or principles underlying parts of Bill C-42, which seeks to amend that same statute, the Judges Act. That places us in a little bit of a quandary in that, if we agree with this motion for the purposes of getting the bill off to a committee for clause-by-clause study and detailed analysis, the record would indicate that we have adopted the bill at second reading and thereby adopted its principle. It places in a quandary those of us who believe that there is a clash of principles.

• (1500)

The principle that I am arguing is the principle of judicial independence, a principle that is enshrined in international instruments as well as in domestic instruments. Our colleague Senator Nolin yesterday drew our attention to a domestic instrument, namely the Charter of Rights and Freedoms, and the right that is contained therein that persons will, when charged, have the right to appear before an independent tribunal. That same principle is to be found in the Universal Declaration of Human Rights of the United Nations; it is also an article of the International Covenant on Civil and Political Rights of the United Nations. As Senator Andreychuk has mentioned, in those circumstances where the international community, under the aegis of the United Nations itself, asks for the participation of Canadian judges in different activities, the United Nations has its own instruments that speak to the importance of that value, namely the independence of the judiciary.

While we may want this bill to receive detailed study in order to have answered many of the questions that have been raised by Senator Cools and others in our debate at second reading, how are we to support the bill by voting in favour of it at second reading, if second reading adoption means approving a bill in principle?

That having been said, there is yet another little bit of a problem. However, I just put that on the record.

Hon. John G. Bryden: Honourable senators —

The Hon. the Speaker: Honourable senators, if the Honourable Senator Bryden speaks now, his speech will have the effect of closing the debate on second reading of this bill.

Senator Bryden: Honourable senators, it is not my intention to repeat the position that I stated at the commencement of the debate. Indeed, I should like to be in a position to refer this bill to the standing committee.

The Hon. the Speaker: It was moved by the Honourable Senator Bryden, seconded by the Honourable Senator Roux, that

this bill be read the second time. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: No.

Hon. Senators: Agreed.

Senator Nolin: On division.

The Hon. the Speaker: On division.

Motion agreed to and bill read the second time, on division.

REFERRED TO COMMITTEE

The Hon. the Speaker: When shall this bill be read the third time?

On motion of Senator Bryden, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

NEWFOUNDLAND

CHANGES TO SCHOOL SYSTEM—AMENDMENT TO TERM 17 OF
CONSTITUTION—REPORT OF COMMITTEE—
MOTION IN AMENDMENT—DEBATE CONTINUED

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.

And on the motion in amendment of the Honourable Senator Doody, 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.”—(*Speaker's Ruling*).

The Hon. the Speaker: Honourable senators, yesterday afternoon a question arose as to whether I had said “Adopté, Carried.” We had some discussion on this matter, and it was agreed that the transcripts would be reviewed. After the session yesterday, we obtained the tape and I sought consultation with both sides, representatives of whom came to my chambers and listened to the tape. Subsequently the tape was played for Senator Prud'homme, the only member of the independent group who is here, and I think everyone was satisfied that, indeed, I had not said “Adopté, Carried.” Therefore, the question before us is the motion in amendment proposed by the Honourable Senator Doody, seconded by the Honourable Senator Kinsella.

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

Hon. Sharon Carstairs: Honourable senators, as I begin my participation in the debate this afternoon on the amendment proposed by the Honourable Senator Doody, I want to express my thanks to Senator Rompkey and Senator Doody for their very kind remarks with respect to the public hearings process on Term 17. The staff, under the effective and excellent leadership of Dr. Heather Lank, the Clerk of the Standing Senate Committee on Legal and Constitutional Affairs, all displayed a professionalism that reflects with pride on our institution.

The hearing process itself, honourable senators, also brought pride to this institution. I have received letters, phone calls and, while in Newfoundland, many personal comments to the effect that no matter what the final decision that this Senate might make on Term 17, or any amendments, they believed that they had finally been listened to. For that they were extremely grateful, and they wanted to express that appreciation to all members of the Senate for allowing that public discourse to take place.

Honourable senators, I want to preface my remarks today with the phrase that those who do not know their history are doomed to repeat its mistakes. I take this as my theme today on Senator Doody's amendment to the proposed amendment on Term 17 because I believe that history is in grave danger of repeating itself if we pass the proposed amendment to Term 17. Regrettably, however, I do not believe that Senator Doody's amendment will remedy that mistake.

Honourable senators, one of the greatest strengths of this nation is that we have had a remarkable history in protecting minority rights. It is true that we have had lapses along the way. It is not for me to judge the actions of those in the past, because hindsight is always 20/20. Suffice it to say that what I must do, to the very best of my ability as a Canadian citizen, is to learn when we have allowed those lapses to take place so that I will not allow a similar lapse in the future.

I deeply regret in our Canadian history that we turned away Sikh immigrants from this country in 1915, for no other reason than that they were Sikhs. I deeply regret that we imposed a head tax only on Chinese immigrants. I think it is deeply regrettable, and quite frankly a blight on our national history, that we turned back Jewish immigrants fleeing from the holocaust in 1939. The internment of Canadians of Japanese descent was a time of infamy in Canadian history.

In 1970, when we imposed the War Measures Act in the province of Quebec, I thought at the time, with the knowledge that I then had, that it was the appropriate thing to do. Now I am no longer sure that we took the right action in 1970.

Therefore, when I look at any kind of constitutional amendment, I examine it through the human spirit and through my own knowledge of history. I try to evaluate decisions in light of similar decisions that have been made in the past. It is with this background that I approach Term 17 and the amendment proposed by Senator Doody.

Senator Doody's amendment would seek to insert the phrase "where numbers warrant" into Term 17 as proposed by the Government of Newfoundland and Labrador. However, I would argue that if you believe Term 17 to be an infringement on minority rights — and I do believe it is an infringement on minority rights — then how can the phrase "where numbers warrant" make it any better?

In 1949 when Newfoundland and Labrador entered Confederation, Term 17 protected seven classes of religious denominations. These seven classes operated schools in Newfoundland, and the entry of the province into Confederation provided through constitutional guarantees that they would continue to operate those schools.

One of those protected classes was the Seventh Day Adventists. Although they have operated more schools in Newfoundland than they do at the present time, they still operate one. During the public hearing process, the Roman Catholic lawyer, Colin Irving argued before our constitutional committee that we should insert in Term 17 the phrase "where numbers warrant." However, when I specifically asked him a question as to what effect inserting that phrase would have on Seventh Day Adventist schools, he admitted that it would not protect them. In fact, he admitted that they would, in all likelihood, cease to exist. The Catholics, who are clearly concerned about the protection of their own rights, showed little or no concern through their legal counsel for the protection of minority rights of others. Surely, honourable senators, that is not what we mean about the protection of minority rights.

I am well aware that the phrase "where numbers warrant" is in the present Charter. It is in section 23(3)(b), and it reads:

includes, where the number of those children so warrants, the right to have them receive that instruction in minority language education facilities provided out of public funds.

Honourable senators, this is a provision of the 1982 Constitution to grant new rights; rights granted under Term 17 are old rights. I would argue that if you believe Term 17 to be an infringement on minority rights, the phrase "where numbers warrant" will not make it any better.

In the case of the Seventh Day Adventists, they have had this right to educate their children in their own schools since 1949, and the addition of this amendment would in fact remove that right. I suspect what will happen to Seventh Day Adventists is what is already happening in Newfoundland. As their adherents wish to send fewer and fewer of their children to a Seventh Day Adventist school, then, by natural attrition, that school will disappear, and that is the way it should disappear. It should not disappear because we have made it constitutionally possible for it to disappear.

I told you earlier in these remarks, honourable senators, that I thought we should remember our history. Therefore, before you consider Senator Doody's amendment and, indeed, before you consider Term 17, I would ask you to remember a little bit of Manitoba history.

Honourable senators, settlement in Manitoba began both with the Northwest Company and the Hudson Bay Company, the Hudson Bay Company coming through the Hudson Bay, the Northwest Company coming over land. We therefore had two ethnic groups developing side by side in the province of Manitoba. We had the French, who inter-married with the Indian population to form the Métis population; we had the English, who eventually brought in settlers such as the Selkirk settlers.

In 1869, when it became clear that the Hudson Bay Company would transfer its control over these lands to the newly formed Government of Canada, the government sent in surveyors. The surveyors were anathema to the Métis people of southern Manitoba, an anathema because they had no concept of ownership of land as had others in this developing nation. They had not registered their lands with the Land Titles Office. They shared the land in common. They hunted it; they trapped it; they even planted crops on it. Suddenly they were presented with the spectre of a group of individuals from this new central government in Canada, which was not their government, laying out all of these lands on a grid, a grid for which they had no comprehension. That, you will remember, led to the Riel Rebellion and ultimately, in 1870, to the establishment of Manitoba as a province, the postage stamp province, if one looks at a geographic map of Manitoba in 1870. It was a small area that surrounded the city of Winnipeg.

The Act of Manitoba, which brought Manitoba into Confederation, had two very important provisions. We did not call them terms in Manitoba, we called them sections — section 22 and section 23.

Section 22 guaranteed the rights of Catholics and Anglicans to continue to educate their children in publicly funded schools. There would be a public school system — unlike Newfoundland which has never developed a public school system — but there would be protections for Catholics and Anglicans who had established schools prior to the entry into Confederation.

The second provision was section 23, which guaranteed the right to the use of the French language in the courts and in the legislature of the province of Manitoba. Those constitutional guarantees were accepted by the Parliament of Canada. In fact, the Parliament of Canada had the right to issue a remedial order if the province of Manitoba did not conduct its affairs appropriately.

Between 1870 and 1890 many things changed in Manitoba. The population, which in 1870 was dominated by the Métis, was no longer dominated by French-speaking Manitobans. By 1890, the population was far more English — Scottish, if you will — than it was French.

In 1890, by two simple acts of the Manitoba legislature, the right to French language services in our courts and in our legislature was thrown out, and the right of Manitobans to a Catholic education or an Anglican education was thrown out by the second act. Legal challenges were raised, and a number of legal cases resulted. Some decisions were in favour of the Catholics and Anglicans and others were not.

I must say at this point, honourable senators, that one could not separate the Catholics from the French. They were one and the same. The loss of French services in the courts and in the schools meant that you were affecting one and the same people.

Finally, the Conservative government of the day in Ottawa decided that they would try to pass a remedial order to ensure the continuation of those rights that had been taken from them by the government in Manitoba.

Well, honourable senators, the Conservative government was defeated in 1896.

• (1520)

Sir Wilfrid Laurier and the Liberals were elected, and Sir Wilfrid Laurier worked out a compromise with Thomas Greenway, who was the premier of the province of Manitoba. The compromise stated that Catholic schools would be allowed to continue provided they met a certain number of requirements, in the sense that religious education could be offered in those schools. A further compromise was that if there were more than 10 children, then a language other than English could be used as the language of instruction.

To be fair to the authors of the compromise, I am sure they believed that French would be the only other language of instruction. But again, between 1890 and 1916, quite remarkable things happened in Manitoba. That is when the waves of immigrants from Eastern Europe — places such as the Ukraine and Poland — began to come to the province of Manitoba. In 1916, it was decided that no language should be used in the school system of Manitoba other than the English language.

Therefore, when I am told that these minority rights will now be protected by the provinces, I look to my own province and ask myself: Where was that protection for French-speaking people in Manitoba? Where was that protection for Catholic children in the province of Manitoba?

What is the status today of Catholic school education, of Anglican school education and of French language services in the province of Manitoba? Many of you know that we have had great fights over those issues in my province. It has not always been our “finest hour” in the province of Manitoba.

I became the leader of the Liberal Party in 1984, in the midst of the so-called French language issue in my province. I must say it was with great pride that I travelled the province of Manitoba to each and every constituency, and was told by Liberals in those constituencies that, yes, the French-speaking people of my province did have rights, and that those rights should be restored.

That, unfortunately, was not the decision made by the legislature. Although the government of the day proposed a solution, that solution was rejected by the opposition. Opposition tactics were used, and eventually the final decision had to be imposed on Manitoba by the Supreme Court of Canada. Thus we now have French language services back in our courts.

The Hon. the Speaker: Senator Carstairs, I regret to interrupt you but your 15 minutes have elapsed.

Is leave granted for the honourable senator to continue?

Hon. Senators: Agreed.

Senator Carstairs: Thank you, honourable senators.

We now have French language services back in our legislature, and it was with pride that I spoke in French at every opportunity in the Manitoba legislature.

We have not, however, been nearly so generous in relation to the restoration of schools in the province of Manitoba. Shortly after the decision by the Supreme Court of Canada on section 23 French language rights in Manitoba, I asked a constitutional lawyer to take a look at section 22, which guarantees education rights. He informed me that, in his judgment, section 22 was equally as strong as section 23, and if it were ever taken to the Supreme Court of Canada, Catholic and Anglican schools would return to receiving funding in the province of Manitoba.

It therefore seemed to me appropriate that a compromise should be found, and I worked with now-Premier Gary Filmon and others to achieve that compromise. We have achieved a compromise in Manitoba; a compromise based on the ecumenical nature of religious denominations. No, Catholic schools do not receive full funding in Manitoba, but they do receive 50 per cent of all funding, whether it comes at the provincial level or from the municipal level. They do not receive moneys to build their schools, but what we did in Manitoba was to say that, together with Catholic schools, we would also include Anglican schools, Mennonite schools and Jewish schools — all independent schools in the province of Manitoba. As a result, I would suggest, of a decision by the Catholics of Manitoba to share with those of other religious denominations, there is now a support system in place.

However, honourable senators, it took us almost 100 years: They lost their rights in 1890; they got them back in 1988. When I look at Term 17 and at the amendment by Senator Doody, I say to myself, "Surely we can find solutions outside of a constitutional amendment. Surely we can do that by not setting artificial criteria. Surely we can do it by saying to the people of Newfoundland, 'the rights you were given in 1949 are the rights that you still have today.'"

Hon. Marcel Prud'Homme: Would the Honourable Senator Carstairs accept a question?

Senator Carstairs: Yes.

Senator Prud'homme: I apologize for missing part of the honourable senator's speech, but I am sure she is aware of my interest in this debate.

Is the honourable senator of the opinion that we still have time to convince the premier of Newfoundland to again try to achieve, without amendment to the Constitution, that which he wants to

achieve — a good system of education and protection for minority rights — or does she think it is too late in time for him to make such an announcement?

The honourable senator is a powerful influence on the people in her party. I think the results will be disastrous. Not many people seem to be on side, but some are awakening to what she has been saying.

Does the honourable senator think it is too late to convince the premier to try again to do what he wants without the use of this hammer, the effects of which will be felt in many quarters of this country? It will form a precedent with unknown and possibly unending consequences.

Senator Carstairs: Senator Prud'homme, I am ever the optimist. I suppose that is why I do what I do in life. I do not think you can be a politician and not be an optimist. However, I cannot answer that question. I do not know whether it is too late to persuade the premier of Newfoundland. I only know that each and every one of us here must do the best that we can to address this issue and to vote with our conscience on the final day.

Hon. C. William Doody: Honourable senators, I am very interested in this proposition that negotiation is the answer to this problem, and I could not agree more. However, would Senator Carstairs not agree that Minister Roger Grimes made it abundantly clear to the participants at every session of the so-called Framework Agreement meetings held between the various denominations and the Government of Newfoundland, that no matter how many concessions they made, the Government of Newfoundland would still insist on the passage of this amended Term 17?

On the other hand, the representatives of the Roman Catholics and the Pentecostals made it abundantly clear that they would do everything they possibly could to prevent the passage of this amended Term 17.

• (1530)

My understanding is that that is still the position of both parties down there, that even if the religious denominations that are affected concede everything the government wants — and they have already conceded about 90 per cent of it — the Government of Newfoundland will still insist on the passage of this amended Term 17 and the resultant diminution of the minority rights involved. Would Senator Carstairs not agree that this was the message that he gave us?

Senator Carstairs: Honourable senators, I agree entirely. That was the message we received from the Minister of Education. However, hope springs eternal, and one can always hope, particularly if a strong message comes from this chamber, that they may be persuaded to change their mind.

Hon. Noël A. Kinsella: Honourable senators, colleagues have saluted Senator Carstairs for the fair and efficient manner in which she chaired the committee which studied this matter. I join in that commendation.

There is one matter on which I should like to invite the honourable senator to provide extra clarification. Senator Rompkey suggested that we are unsure of the real view of the Roman Catholic community on whether the right that they presently have protected in the Constitution should be taken away by this provision.

The honourable senator heard the Roman Catholic Archbishop who appeared before the committee. Is it not true that he made it categorically clear that the position of the Roman Catholic Church is that they wish to retain that right and that, as the Roman Catholic Archbishop is the corporation sole under civil law as well as the head of the church under ecclesiastic law, there can be no doubt at all that the categorical position of the Roman Catholic community is that they do not wish to have their present right abrogated?

Senator Carstairs: Honourable senators, I think it is always necessary for us to separate the leadership of a religious group from the participants or the believers. In fairness to Senator Rompkey, that is the comparison he was attempting to draw. I will give another comparison.

I was raised Roman Catholic. I had the option to send my children to Roman Catholic schools in the province of Alberta. I chose not to because I decided that the school in my neighbourhood, which was not a Catholic school, was the suitable place for my children to attend. However, I would fight to the death to preserve the rights of other Roman Catholics who want their children to go to a Roman Catholic school. The views of adherents of a religious belief and those that speak for the church are not necessarily consistent.

Senator Kinsella: The other minority group involved, the Pentecostal community, represents 7 per cent of the population. Their representatives appeared before our committee. In the honourable senator's opinion, were they categorical in saying that, as a class of persons, they do not wish to have that right taken away? Did they not also give evidence to the effect that they almost have complete enumeration because over 85 per cent of the members of that class of persons wrote letters to that effect?

Senator Carstairs: The issue is much clearer in terms of the Pentecostals. I think it is fair to say that members of the Pentecostal faith throughout this country are more devoted adherents to their church than many of us who were raised in the Roman Catholic faith are to ours. We are Catholics in our hearts and we always will be. Most of us will end up being buried in Catholic churches, but that does not mean that we go to church every Sunday. That seems to be a pretty fair reflection of Catholics across Canada today.

I do not think that is a fair reflection of Pentecostals. When Pentecostal leaders state that they speak for other adherents, they

seem to do so with more definitiveness, quite frankly, than Roman Catholic clergy.

Senator Kinsella: This house is not unfamiliar with the question of the corporation sole. It has been a matter of some debate in the recent past. Is it not true that the Roman Catholic archbishop is the corporation sole?

Senator Carstairs: Certainly, the Roman Catholic archbishop would argue that.

On motion of Senator Forest, debate adjourned.

BUSINESS OF THE SENATE

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, it seems to me that there is a disposition among us to stand all remaining orders because of committee schedules, with the exception of Motion No. 59 standing in the name of Senator Bacon. Once we have disposed of that motion, we can adjourn, if there is agreement to that effect.

STATE OF TRANSPORTATION SAFETY AND SECURITY

TRANSPORTATION AND COMMUNICATIONS COMMITTEE
AUTHORIZED TO STUDY AND REPORT UPON
TECHNICAL, LEGAL AND REGULATORY ISSUES

Hon. Lise Bacon, pursuant to notice of Tuesday, October 1, 1996 moved:

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.

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.

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