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(HANSARD)

Wednesday, October 30, 1996

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Wednesday, October 30, 1996

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

Prayers.

SENATORS' STATEMENTS

STATE OF THE ARTS IN CANADA

Hon. Philippe Deane Gigantès: Honourable senators, in the interests of not prolonging the sitting yesterday, and in answering Senator Johnson's excellent inquiry on the need to help culture in Canada, I did not mention other examples where subsidizing by public authorities has helped enrich the whole world's culture.

Let us not forget that Michelangelo was subsidized by the Borgia Pope, head of the Vatican state. Without the subsidy, we would not have the Sistine Chapel. Johann Sebastian Bach was subsidized throughout his creative life. Had he not been subsidized at public expense, we would not have even a small fraction of the incredible volume of beauty he has produced in music. Italy is a delight because of the glories of its architecture and art, all subsidized in the middle ages. El Greco was subsidized by the Spanish court. Other great Spanish artists were also subsidized by the public purse.

These great bursts of artistic and cultural creativity around the world have enriched us all. Culture is not regional. With our modern means of communication and travel, it is not even national. It is not even something that belongs to only one continent. It belongs to all of us.

It is our duty to contribute to this culture with artistic creations of our own; subsidized, if necessary, so that we pay something back to this great treasure that is the culture of the world around us.

From Asia, Africa, Europe, North America, South America — we owe it to ourselves to participate in these most wonderful acts of creation.

[*Translation*]

ENERGY

ROUTE FOR OFFSHORE NATURAL GAS PIPELINE FROM ATLANTIC CANADA

Hon. Eymard G. Corbin: Honourable senators, yesterday, I listened carefully to the questions asked by Senators Forrestall and Comeau on the possible route for a gas pipeline from Sable Island to Quebec. I would be remiss if I did not comment at this stage on the exchanges between the senators across the way and the Leader of the Government in the Senate. I do not know all the parameters of the question. I must admit to being slightly in the dark. However, I have full confidence in the National Energy Board's independence in reviewing this matter.

The honourable senators opposite, whose names I just mentioned, seemed to suggest that, if the route did not go through the U.S., this would disappoint the people in the Atlantic region, especially New Brunswick. I am from New Brunswick. I am from the Upper Saint John Valley. I know my hometown well. We are very dependent on the primary sector, forestry and agriculture. We have large food processing plants and paper mills, not to mention all the other activities.

They seemed to focus on the fact that some people may have given preferential support for a gas pipeline going through Quebec. However, they fail to mention that, if the gas pipeline went through Quebec, it would also, of necessity, cross New Brunswick. One should give as complete a picture as possible when asking this kind of question.

In fact, New Brunswick would benefit from a gas pipeline going through it. I understand that the financial interests behind this project would like the route to go through the U.S., through New England.

I have full confidence in the objectivity of the National Energy Board's studies and findings in this matter. And if this decision should favour a completely Canadian route, I would welcome it, not personally but for the people of the province I represent here in the Senate.

[*English*]

MULTICULTURALISM

ESTABLISHMENT OF CANADIAN RACE RELATIONS FOUNDATION—CONGRATULATIONS TO GOVERNMENT

Hon. Noël A. Kinsella: Honourable senators, it is with pleasure that I rise at this moment to commend the government on its initiative in establishing the Canadian Race Relations Foundation, according to the announcement made by the Leader of the Government in the Senate yesterday, and on the appointment of the members of the board of that foundation. I congratulate the government on that intiative without reservation. I have examined the list of appointees, and I see a great number of men and women of outstanding ability who will make a major contribution to the work of that foundation.

Honourable senators will recall, of course, that the establishment of that foundation is as a result of Bill C-63, which was part of the initiative that the government of Prime Minister Mulroney undertook to reach a redress agreement with Japanese Canadians. The Canadian Race Relations Foundation was an element of that redress program.

We are pleased to see that initiative of the former government brought to fruition, and we wish the members of the Canadian Race Relations Foundation all the best in the important work that they will now undertake.

QUESTION PERIOD

TRANSPORT

PEARSON AIRPORT AGREEMENTS—INTRODUCTION OF NEW LEGISLATION—GOVERNMENT POSITION

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, last June, following the defeat of the Pearson International Airport Agreements bill, there was much negative comment by members of the government, and lots of huffing and puffing, particularly by the Minister of Transport, who vowed at the time that he would do everything possible to see — to paraphrase his own words — that taxpayers would be spared having to pay over $600 million in lost profits — an interpretation of the Senate's decision which could not be more misinformed.

In any event, the suggestion at that time, and repeated a number of times, was that the minister would probably introduce a new bill to see that certain damages or claims would not even be entertained. Here we are, nearly five months later, and all this righteous anger and bellowing has given way to what I think is a strange silence on the part of the government.

The question is obvious: Does the government intend to introduce a bill cancelling the Pearson agreements during this session?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, no decision has yet been made on that matter.

PEARSON AIRPORT AGREEMENTS—POSSIBLE NEGOTIATIONS ON SETTLEMENT—GOVERNMENT POSITION

Hon. John Lynch-Staunton (Leader of the Opposition): Then the possibility still exists. Meanwhile, are there any reasons to believe that there might be some negotiations going on between the parties for an out-of-court settlement?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, the Pearson airport situation is under the consideration of the cabinet, and I have nothing further to add.

Senator Lynch-Staunton: The Minister of Transport, in answer to a question in the other place on October 4, similar to the one I have just asked, said:

> ...we must sometimes wait on the courts, but I can assure the hon. member that as soon as we are in a position to make a decision that will be right for all the individuals involved, we will do so.

If the Minister of Transport is saying in the House of Commons that the government wants to be in a position to make a decision that will be right for all the individuals involved, is that not a clear indication that the government is entertaining negotiations for an out-of-court settlement?

Senator Fairbairn: Honourable senators, it is a very forthright statement on the part of the Minister of Transport that the government hopes to reach a decision that will be of benefit to all concerned.

Senator Lynch-Staunton: What does the Minister of Transport mean by "a decision that will be right for all the individuals involved"?

Senator Fairbairn: I think Senator Lynch-Staunton will have to wait, as will I, for the decisions that will be made on this issue. As I have said, this issue is under consideration, and no decisions have yet been made.

Senator Lynch-Staunton: The Leader of the Government has confirmed that the government hopes that a decision will be made that is right for all the individuals concerned. Could she please explain to us what she means by that? What decision can be right for all individuals involved?

Senator Fairbairn: No, I cannot, senator. As I said, the Minister of Transport is reviewing all of the options on this issue, and will come to a decision, and at that time all of us, including myself, will know what that decision is.

Hon. R. James Balfour: Honourable senators, will this be a unilateral decision on the part of the government, or will it be the product of negotiations between the parties?

Senator Fairbairn: Honourable senators, with regret, I cannot answer that question. Again, this is an issue on which the Minister of Transport is working, and we will wait and see what the results of his deliberations are.

Senator Balfour: Deliberations or negotiations?

NATIONAL FINANCE

FAILURE OF CONFEDERATION LIFE—ESTIMATE OF MAGNITUDE OF LOSS—GOVERNMENT POSITION

Hon. Finlay MacDonald: Given the revelations in a new, fascinating book entitled *Who Killed Confederation Life?*, does the Leader of the Government in the Senate concur with the book's conclusion that, due to the 1994 seizure of Confederation Life Insurance Company by this government, the losses could reach $2.6 billion? I realize that the minister does not have the answer in her purse.

Senator Doody: She left her wallet at home.

Senator MacDonald: We on this side have well-grounded suspicions about the sometimes shoddy research of certain recent books. However, if that is so, then the loss makes it the largest insurance company failure ever in North America. It catapults Confederation Life into fourth place on the all-time global list of financial services failures.

Honourable senators, if the Leader of the Government does not agree with these figures, possibly her officials could provide us with the most recent loss estimate, more than two years after liquidation commenced.

Hon. Joyce Fairbairn (Leader of the Government): Listening to Senator MacDonald's references from this book, I can see why he would be gripped by the prose. I am not familiar with the book nor its details. I will be glad to pass on the senator's question.

Who was the author, Senator MacDonald?

Senator MacDonald: Rod McQueen.

Honourable senators, I do not have a supplementary, but awaiting the reply begs a variety of other questions.

GOODS AND SERVICES TAX

HARMONIZATION WITH PROVINCIAL SALES TAX—LOCATION OF RESULTING JOBS—GOVERNMENT POSITION

Hon. J. Michael Forrestall: Honourable senators, my question takes us back to the harmonized tax that the governments in Halifax and Ottawa negotiated at a cost of some $84 million annually for Nova Scotians alone. We have learned that not only are Nova Scotians facing additional taxes on such necessities as home heating and children's clothing, but our province will be losing between 100 and 200 jobs to the province of New Brunswick. This is the direct result of a decision to establish a new headquarters for the collection of the HST in New Brunswick.

Can the minister tell us if this is true? Will there be that economic impact and loss of jobs to Nova Scotia, where presumably much of the work is being done in-house by the Department of Revenue in their Halifax offices?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I will have to look into that question. I will be pleased to do so.

Senator Forrestall: Could the minister look into the rumour, which I believe to be well founded, that these 200 jobs are going to Premier McKenna's riding?

Senator Fairbairn: Honourable senators, I always rely on Senator Forrestall for good rumours and speculation, although he was a little off the mark on the Senate appointment for Nova Scotia. However, we will overlook that. We are all so delighted with the arrival of our colleague Senator Moore.

I will follow up the trail for my honourable friend and see what I can come up with.

Senator Forrestall: These are not job replacements either.

NEWFOUNDLAND

CHANGES TO SCHOOL SYSTEM—AMENDMENT TO TERM 17 OF CONSTITUTION—TIMING OF VOTE IN SENATE—GOVERNMENT POSITION

Hon. Noël A. Kinsella: Honourable senators, I should like to return to the matter I raised yesterday in Question Period with respect to the concern on this side that a time be set for the vote on matters relating to Term 17. My question to the Leader of the Government in the Senate is this: Will the government agree to taking the vote on Term 17 before the end of November?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, as I said to my honourable friend yesterday, we are conscious of the time element. We will see that the responsibilities of the Senate are fulfilled within that time. I understand discussions are going on between the leadership.

Hon. Marcel Prud'homme: Honourable senators, I have a supplementary question. I enjoy it very much when I hear the leader say that there is ongoing consultation. I want to reassure Senator Finlay MacDonald that I am totally unaware of any ongoing dealings. If there is anything going on, I wish to be informed.

I have been interested in this matter from day one. If you look at the record, you will see that I put my views on this issue long before people started to attach to my views their own views. I proposed that there should be hearings. I said adamantly that the Senate should be abolished if there were to be no Senate hearings in Newfoundland.

Honourable senators, I am happy with this development. However, November 1 is upon us and December 1 is coming very fast. I want to be able to vote on the question, be it for, against or to abstain. I want to be sure that we do not just hear from one speaker a day. Most likely there will be an adjournment.

I am not privy to any information, but I am sure that the Senate will not be sitting the week of November 11. The House of Commons will not be sitting that week. There is not much time left so the sooner the better. I am ready to speak on the amendments put forward by our esteemed colleague Senator Doody, and any others, and to go to third reading.

This is a very important matter. Leave to the House of Commons the games of surprising members at the last minute. We are adults; we are knowledgeable people. We know all the trickery that can take place. Let us leave that to the House of Commons.

By the way, the Bloc Québécois wants to abolish the Senate. I hope some of you will come with me at 5:45 p.m. today to enjoy a stupid debate with the Bloc Québécois. I will go after every single one of them in their own districts if they are talking about abolishing the Senate. I want some of you to join me in Quebec, especially when I encounter Mr. Crête from Rivière-du-Loup and others.

Can the Leader of the Government assure us that we will have plenty of time to dispose of this resolution one way or the other by December 1 so we are not stuck?

Senator Fairbairn: Honourable senators, first, I know that the honourable senator was not implying it, but in terms of the relationships that have been developed in this chamber in recent years, there has never been a case of trickery or anything of that nature. We have two extremely competent gentlemen as deputy leaders, and I can tell Senator Prud'homme that they work very hard to accommodate all of us in setting the agenda and timetable of this place.

We would certainly wish to hear the views of someone such as the honourable senator, who has spent a great many years involved in these issues, and I encourage him to get into the debate. He can rest assured that my colleague will keep him informed.

FISHERIES AND OCEANS

FAILURE OF CANADA-EUROPEAN UNION ACTION PLAN— REFUSAL TO REPEAL COASTAL FISHERIES PROTECTION ACT— GOVERNMENT POSITION

Hon. Duncan J. Jessiman: Honourable senators, my question is directed to the Leader of the Government in this chamber.

On October 21, Senator Stewart stated in this chamber the following:

> In October of 1995, Germany and Canada began work on a Canada-European Union action plan.

He went on to say:

> The expectation was that an agreement would be signed...on June 26, 1996.

He then went further and said:

> Alas, as honourable senators know, this did not happen. The agreement the European Union wanted would have contained a provision against the extraterritorial application of national laws. In order to accept that provision, Canada would have had either to repeal certain sections of the Coastal Fisheries Protection Act, sections which were added in 1994, or to exempt fishing vessels from European countries from the provision of those sections. Canada was unwilling to accept either of those conditions; thus, there was no agreement.

• (1400)

On October 29, Senator Grafstein said:

> The U.S. has already negotiated and signed a trade platform. A Canadian action plan has been left out in the cold. Our "fish war" set back our action plan. Unless we can call on our European friends to complete first principles, Canada will find itself isolated and overly dependent upon its North American trade ties. This is not good for Canada.

Is the government reconsidering its refusal to repeal certain sections of the Coastal Fisheries Protection Act concerning extraterritorial applications of our laws? If the answer to that question is "no," what, if anything, is the government doing to get a Canada-European Union action plan in place before it is too late?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I will be very pleased to take those questions to the Minister of Foreign Affairs and receive a response for you. I commend you for asking the question; I also commend my colleagues for their participation.

To all of those honourable senators who worked on the report that came out of the Standing Senate Committee on Foreign Affairs on Europe, I have heard nothing but the highest of praise for that document, which emanates from people not just here in Canada, but from those who are interested in these issues well beyond our borders. I congratulate everyone who has been involved in this study for accomplishing such a fine piece of work. I will be very pleased to take your question to my colleague.

GOODS AND SERVICES TAX

HARMONIZATION WITH ATLANTIC PROVINCIAL SALES TAXES— EFFECT OF LACK OF HARMONIZATION IN OTHER PROVINCES— GOVERNMENT POSITION

Hon. Gerald J. Comeau: Honourable senators, I have a question for the Leader of the Government in the Senate regarding the brand new harmonized sales tax.

I will not dwell on the higher cost of everyday essentials that this new tax will impose, but I should like to ask the minister whether her government believes that by hiding the tax it would somehow avoid criticism for imposing such a tax on a region of Canada that is already in extreme economic difficulty.

As well, is it not obvious to the minister that hiding the tax in three provinces while leaving it completely open in the other seven will cause more division rather than harmony in our nation?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, as Senator Comeau knows, I always welcome his questions, particularly on this issue. However, I must take issue with him on the foundation of his question.

The governments of the Atlantic provinces, who have come to an agreement on harmonization, are not hiding the tax. When Canadians pick up a piece of merchandise, there are two things that they want to know: They want to know what they will pay for it and what the tax is on that item. That is precisely what harmonization does. On their price tag, Canadians will see what they will pay at the counter, and on their receipt they will clearly see the sales tax that is applied. That is something that has been indicated widely across the country, namely, that people are very keen to have this information. I commend the three Atlantic provinces for incorporating that feature in their agreement with the federal government.

Senator Comeau: I have a supplementary question. I am pleased that the minister raised the question of the sales tax. The Canadian Tire store alone has estimated that it will cost over $9 million to make the necessary changes to the computerized cash registers in their stores. This $9 million will result either in lost jobs or in an added cost that will be passed on to consumers in an effort to recover this loss.

Is this the kind of tax for which Canadians are asking their governments across the country? Is this what the minister is trying to suggest, namely, that Canadians do want to pay those higher costs? Or were the three provinces of Atlantic Canada who chose to harmonize reading the signals wrong this time around?

Senator Fairbairn: I do not believe they were reading it wrong at all. I think that the three Atlantic provinces who have engaged in this agreement have shown a great deal of foresight in taking advantage of the opportunity to harmonize their taxes, which will bring the taxes in those provinces down, not inflate them.

As far as the example that my honourable friend has related to me, obviously I cannot comment upon the speculations of this particular commercial outlet regarding the re-tooling of their systems. What I do know — and what my honourable friend probably would have heard when the announcement was made — is that, because of the way in which this harmonization will be carried out, it is not envisaged that retail outlets across those provinces will need to completely redo their systems. In any event, perhaps we should wait and see, as the final preparations are made from now to next April. It may well be that this firm will not incur the expenses that, at first glance, it believed it would incur.

That is my information, Senator Comeau. I can look into the matter further, but it seems to me that, as the process continues, there will be a great deal of assistance offered to businesses in terms of how this harmonization will affect their operations. Every effort will be made to make the transition to the new harmonization process as beneficial and as easy as it can be.

Senator Comeau: If this sales tax was in such demand in Nova Scotia, why did the Premier of Nova Scotia sign the document and the deal prior to the Legislative Assembly opening its session? If the legislature had been in session, then all of the members of the provincial legislature could have debated this brand new deal, and spoken on behalf of their constituents prior to the signing of such a deal.

What I am saying is that, whether or not Nova Scotians were in favour of such a deal, the Premier of Nova Scotia might have garnered more support for it by allowing such a public debate prior to signing this agreement.

Senator Fairbairn: Honourable senators, obviously I cannot delve into the operations of the provincial legislature in Nova Scotia. However, this has not been a closed process. This matter has been open to public debate now for several months. To their credit, representatives in this chamber have been extremely active, outspoken and vigorous in their questioning and comments on this particular issue.

It was also well known that there was a timetable of negotiation regarding this agreement, and negotiations were carried on fairly close to that timetable. I am sure there will be considerable discussion in the province of Nova Scotia as the harmonization process works through the system.

There has been quite extensive and public discussion on this issue, certainly within the three Atlantic provinces in which harmonization will take place. I believe that my honourable friend and his colleagues have added a good measure of scrutiny to that process.

[*Translation*]

AFRICA

AMBASSADOR CHRÉTIEN TO VISIT RWANDA-BURUNDI-ZAIRE REGION AS UNITED NATIONS EMISSARY—GOVERNMENT POSITION

Hon. Pierre Claude Nolin: Honourable senators, it would appear that His Excellency, the Canadian Ambassador to Washington, Raymond Chrétien, is going to be appointed by the United Nations to a temporary position, but will — to all intents and purposes — be working for the United Nations as a special emissary to Zaire. Do you know whether he will continue to be paid as a Canadian ambassador, or whether he will receive special remuneration from the United Nations to act as a special emissary to Zaire?

[*English*]

• (1410)

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, it is a very important and sensitive move to send the Canadian Ambassador to Washington to that troubled area. Because of his experience from past assignments in the area, he will be an absolutely irreproachable presence there and can perhaps help initiate a process of mediation and peace.

I will look into the details of his engagement for my honourable friend. My cursory understanding is that he will go under the normal arrangements in diplomatic missions such as this. His expenses for any resources that might be needed on the ground will probably be paid. He will be operating within his Canadian position.

I know what my friend is getting at. Such initiatives are quite normal in the diplomatic community. Particularly in times of great stress internationally, people from various countries are asked to help with their expertise.

MISSION OF AMBASSADOR CHRÉTIEN TO RWANDA-BURUNDI-ZAIRE REGION— DEFINITION OF ROLE—GOVERNMENT POSITION

Hon. A. Raynell Andreychuk: Honourable senators, it is my understanding that Ambassador Chrétien will go there with three objectives as an emissary of the Secretary General and not as a Canadian official. I understand that his services will be paid for by the Canadian government.

Are we now saying that our foreign policy interests in the Great Lakes region of Burundi-Rwanda-Zaire is on all fours with that of the United Nations, or do we have a separate and distinct foreign policy?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, we are talking about two very different things here. Honourable Senator Andreychuk is probably much more expert than I in these matters. I will seek a specific response to her question from my colleague the Minister of Foreign Affairs.

However, our ambassador has a wealth of experience in this area, which is currently being devastated. It is the time for someone with that kind of experience to try to do his best internationally. That does not mean that he renounces his Canadian identity. He is there as a Canadian with great experience helping the United Nations on behalf of the world. We should be saluting that initiative rather than questioning his presence there.

Senator Andreychuk: Honourable senators, it is not a question of not wanting to help the United Nations. This is a very complex and difficult situation. The European community has made efforts to send emissaries to this region. There are emissaries there from Tanzania. This problem continues to plague the population there and has widespread ramifications.

Arms transport is part of the problem. Where are these arms coming from to fortify the groups that are committing what appears to be another slaughter in that area? I applaud the government for having sent Special Ambassador Bernard Dussault and, now, a further ambassador to replace him.

I do not believe that Canada should become part of the problem; rather it should become part of the solution. Under what auspices will Ambassador Chrétien be there? How will his role be different from that of our standing ambassador, the special ambassador to Rwanda? How will those two roles play out on the field? Will we find ourselves caught as part of the problem?

I am mindful of Somalia and Bosnia, and of our previous roles in Rwanda. How will this role be different? How will foreign policy interests and human rights issues there be handled? In other words, how will Ambassador Chrétien's role further our issues, our concerns and ultimately our ability to assist the Rwandan people?

If we tie ourselves to the UN, we may limit the scope of our ability to help. Therefore, I should like to know under what auspices Ambassador Chrétien will be there and whether there will be a distinction between our foreign policy interests and those of the United Nations in the field.

Senator Fairbairn: Honourable senators, Ambassador Chrétien will be in the area for one month as a special envoy to the Secretary General. He is being sent there to assess the crisis and to look at the range of possibilities for defusing the situation, which is desperate. He will be advising the Secretary General as to the possibility of a United Nations presence in the area. His is a very short-term assessment role.

I will convey to my colleague the Minister of Foreign Affairs the precise questions my friend has asked. However, at this time I emphasize the urgency. If, because of the respect Canada has earned for its role in humanitarian and peacekeeping operations in those areas, a Canadian can swiftly make a preliminary assessment that will be of help, I say that we should let Ambassador Chrétien do that job. I will get the answer to my friend's question as soon as possible, but I would hate to think that we would hold the man back when help is so desperately needed.

ORDERS OF THE DAY

JUDGES ACT

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

On the Order:

Resuming the debate on the motion of the Honourable Senator Bryden, seconded by the Honourable Senator Stollery, for the third reading of Bill C-42, to amend the Judges Act and to make consequential amendments to another Act;

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Doody, that the Bill be not now read the third time but that it be amended:

(*a*) in clause 4 on page 3:

(*i*) by replacing line 13 with the following:

approval of the Council.,

(*ii*) by replacing line 15 with the following:

granted pursuant to subsection (1), the chief, and

(*iii*) by deleting lines 23 to 31; and

(*b*) in clause 5, by replacing lines 11 to 45 on page 4 and lines 1 to 35 on page 5 with the following:

> **56.1** (1) A judge on leave of absence granted pursuant to subsection 54(1) may, with the approval of the Council granted pursuant to subsection (2), perform judicial or quasi-judicial duties for an international organization of states or an institution of such an organization and may receive in respect thereof reasonable moving or transportation expenses and reasonable travel and other expenses from the Government of Canada.
>
> (2) Where a judge requests a leave of absence pursuant to subsection 54(1) to perform judicial or quasi-judicial duties for an international organization of states or an institution of such an organization, the Council may, at the request of the Minister of Justice of Canada, approve the undertaking of the duties.

Hon. Richard J. Stanbury: Honourable senators, I wish to speak briefly on Bill C-42. First, I will try to clear up a question which was asked yesterday of Senator Carstairs by Senator Cools. Senator Carstairs has asked me to deal with it.

Senator Cools said, as reported at page 1030 of the *Debates of the Senate* of October 29, 1996, that proposed section 56.1(7) may be called a deeming clause, and she asked for an explanation regarding this point.

Senator Cools is quite right, and it is important for us to understand the limited nature of the application of the clause. The Judges Act provides that, if a judge dies, the surviving spouse and children will receive a benefit. The benefit provided in each case is calculated as a percentage of the judge's salary.

However, since a judge who is on leave without pay is not in receipt of a salary, there would be no basis for that calculation if he or she should die.

Proposed subsection 56.1(7) requires the government to use the amount of the normal judge's salary for the purpose of that calculation so the spouse and children do not forfeit that benefit.

Senator Andreychuk also asked an excellent question. She said at page 1031 of the *Debates of the Senate* of October 29, 1996:

> However, when one considers that the perks of office follow the judge — as I understand would happen under the bill without the amendment — for purposes of pension and other benefits....Is Canada not in fact paying some aspects of a judge's wages...?

Senator Andreychuk, the answer is no. When a judge goes on leave without pay, government benefits stop. He or she has to make a one-time election under proposed subsection 56.1(3) as to whether to continue making contributions toward the pension while away out of his or her own pocket. If he or she elects to do so, then the time away will be included in the 15 years required to qualify for retirement. If he or she elects not to do so, that time will not be included.

Regarding health care, judges have the lowest-level protection under the public service health care plan, and they pay for it themselves.

Honourable senators, as I have said, I rise in support of Bill C-42 and in opposition to Senator Nolin's motion in amendment. Let us not lose sight of the real issue here. The amendments to the Judges Act that are in dispute are designed to allow Madam Justice Arbour to serve as the chief prosecutor of the United Nations International Commission on War Crimes for the former Yugoslavia and Rwanda. This is a very great honour for Madam Justice Arbour and for Canada.

At the request of the Judicial Council, the amendments were broadened to provide a process for the approval of leave without pay for other judges who may be called to international service in the cause of justice.

We all watched in horror as the reports emerged on events in the former Yugoslavia and Rwanda, terrible, unspeakable acts of butchery. I understand that Madam Justice Arbour has already visited some of those killing fields. You can imagine how a 48-year-old mother of three might be affected by such an

experience, even if she has had the experience of sitting on the Court of Appeal of Ontario. As Canadians, we took solace in the knowledge that Canadians were actively engaged in combating those horrific crimes. General Lewis MacKenzie was at the centre of international peacekeeping efforts in the former Yugoslavia. General Roméo Dallaire commanded the United Nations forces in Rwanda.

The question of "Canadian identity" has been pondered extensively, especially in recent years. I have no doubt that our role as international peacekeepers, our willingness to put our lives at risk in order to help other nations to find peace is very much part of the Canadian identity. It is a part of which I am very proud, and I know that millions of other Canadians share that pride.

Now we have an opportunity to continue these efforts, not with guns but with law. That is the task offered to Madam Justice Arbour. Just as our military peacekeeping efforts in the former Yugoslavia and Rwanda were at the request of the United Nations, now again it is the United Nations that is turning to us for help in upholding international law in these regions.

Our judges are among the finest in the world. Our traditions of justice, our respect for the rule of law, our defence of human and civil rights — these are the qualities that make our judiciary a model for emerging democracies in Eastern Europe, Africa and the Caribbean. These are the qualities that enable Canadians to trust our legal system. These are the qualities that are essential if an international war crimes tribunal is to fulfil its terribly important and difficult task.

I applaud the decision of the United Nations Secretary General, Mr. Boutros Boutros-Ghali, in selecting Madam Justice Arbour to serve as chief prosecutor. It is a quasi-judicial position in the European tradition, not at all like that of a Crown attorney in our tradition. I do not envy her the difficult job ahead, but I have full confidence in her ability to serve with distinction. Let us not delude ourselves. This is no pleasure-seeking junket. As the position was explained to the Standing Senate Committee on Legal and Constitutional Affairs, the job involves collecting all the evidence, deciding which cases should be addressed and — something that is currently proving extremely difficult — trying to persuade countries to arrest the accused individuals.

On Monday, Senator Cools quoted some statements by Brigadier-General Telford Taylor who served as U.S. chief counsel at the Nuremberg war crimes trials. I, too, should like to quote him for his views on what made the Nuremberg and Tokyo post-World War II war crime trials work. He wrote in his book, *Nuremberg and Vietnam: An American Tragedy*:

> Military courts and commissions have customarily rendered their judgments stark and unsupported by opinions giving the reasons for their decisions. The Nuremberg and Tokyo judgments, in contrast, were all based on extensive opinions detailing the evidence and analyzing the factual and legal issues, in the fashion of appellate tribunals generally. Needless to say, they were not of uniform quality and often reflected the logical shortcomings of compromise, the marks of which commonly mar the opinions of multi-member tribunals. But the process was *professional* in a way seldom achieved in military courts, and the records and judgments in these trials provide a much-needed foundation for a corpus of judge-made international penal law.

Anyone who has followed the development of international criminal law knows that prosecuting war crimes is not easy. If we as an international community are going to make it clear that certain acts will not be tolerated, that genocide is a crime against humanity, that mass murder and rape cannot hide behind a camouflage of war, then we must do everything in our power to assist this process and make sure that it is of the very highest professional calibre.

Madam Justice Arbour has been selected for this task. I offer her my congratulations and my very best wishes for the important work before her.

Some here would question whether Madam Justice Arbour's judicial independence will somehow be compromised as a result of accepting this position. This is passing strange. It is precisely her judicial independence that qualifies her for the position. Indeed, the whole reason for this change in the Judges Act is that the United Nations was concerned that an international war crimes prosecutor's independence could appear to be compromised if she were to accept pay from a particular country rather than from the United Nations.

Honourable senators, we cannot proclaim ourselves a nation of peacekeepers and sit idly by while terrible crimes against humanity are perpetrated. We have been asked to participate in bringing the perpetrators to justice. How can we refuse — by saying that it is not for Canadians but that others can do that difficult job? I think it is appropriate on the issue of prosecuting crimes against humanity to reflect on the words of the Jewish sage Hillel, who asked:

> If I am only for myself, who will be for me? And if not now, when?

Let us be clear: The only way in which Madam Justice Arbour, or any Canadian judge, can participate in this important work is for the United Nations to pay her for her work. That is a condition imposed by the United Nations because it is a quasi-judicial post in which they must ensure impartiality and independence. Thus, the amendments proposed by Senator Nolin would effectively make it impossible for a Canadian judge to accept such a position and, in particular, for Madam Justice Arbour to accept this position.

I believe that this is precisely the sort of international activity in which we should be engaging. I applaud the government for introducing these amendments to the Judges Act to make these activities possible. That is exactly what Bill C-42 does. It makes these activities possible. If the war crimes trials are going to work and if standards of conduct are to be upheld and enforced throughout the world, then it is absolutely imperative that the whole international community have the utmost confidence in the chief prosecutor.

We should congratulate Madam Justice Arbour. We should congratulate the United Nations on their excellent choice. We should justifiably take pride in the appointment for its reflection upon our judiciary and our system of justice.

Hon. A. Raynell Andreychuk: Would Senator Stanbury permit a question?

Senator Stanbury: I am not sure it is safe.

Hon. Eymard G. Corbin: Could I inquire how much time is left in Senator Stanbury's speaking time?

The Hon. the Speaker: There are two minutes left in Senator Stanbury's time.

Senator Corbin: We should extend that opportunity for a few minutes.

Senator Andreychuk: I hope we are not using up the two minutes in this dialogue.

I associate with Senator Stanbury's comments about Canada taking pride in having Madam Justice Arbour participate in the war crimes tribunal. I believe there are many eminent Canadians that can be called upon to do that kind of task. That is not where the difficulty lies. In fact, I applaud the government for taking the advice of the judicial council to bring the amendments. The difficulty does not lie in having her take that position. The difficulty lies in the process chosen to exempt judges from their duties here.

Do you not believe that, in the Canadian situation, the prosecutorial role and the judicial role are distinct? In some other countries, judges carry the capacity of prosecuting. I could point out some European jurisdictions.

On a world level, I do not believe Justice Arbour's position as a judge will be compromised, but when she returns home and resumes her duties as a judge, do you not believe that the prosecutorial function will have some difficulties? The amendments deal with that, to ensure that she comes back with the same unblemished record and that she can continue with the fine reputation that she has now.

Senator Stanbury: Honourable senators, if I may answer the last part first, the amendment makes it impossible for her to be appointed. The amendment simply cannot be passed without ruining the whole thing.

To answer the honourable senator's other question, Madam Justice Arbour is to be a prosecutor in the European tradition of that post. That is certainly different from our concept of prosecuting; there is no question about that. However, that does not mean that her experience and her qualities are not ideal for that particular position.

As to the honourable senator's concern about the judge coming back and having some problem, it is, I suppose, a possibility, but there are many possibilities that we cannot cover in legislation.

Senator Andreychuk: Perhaps I could point to an absolute case. The present judge who sat in that position was compelled to make some public —

The Hon. the Speaker: Honourable senators, I regret that the time period for Senator Stanbury is exhausted.

Hon. Philippe Deanne Gigantès: I move the adjournment of the debate.

Hon. John Lynch-Staunton (Leader of the Opposition): Can we have leave for Senator Andreychuk to complete her question? Can she be given that courtesy?

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker: Leave is not granted.

Hon. C. William Doody: Honourable senators, we have just created a very interesting precedent here in terms of leave for a senator to continue with a speech or to continue with a question.

If honourable senators on that side of the house want to deny leave to our people to simply finish answering a question, then I am sure the same lack of courtesy will be imposed on those across the way. Count on it.

Senator Gigantès: That will improve the quality of speaking in the Senate by encouraging brevity.

Senator Doody: The only way of improving the quality of speaking in the Senate is to remove Senator Gigantès.

The Hon. the Speaker: Order. We cannot have three senators standing and speaking at the same time.

I recognize Senator Doody. Has the honourable senator completed his point?

Senator Doody: I think so. Because Senator Gigantès seems concerned about improving the quality of speaking in the Senate, I simply suggested that he stop speaking. That might help.

Hon. B. Alasdair Graham (Deputy Leader of the Government): Perhaps we could review the situation, honourable senators. I ask, if my colleagues will agree, that we allow Senator Andreychuk to complete the one question she had remaining and Senator Stanbury to respond.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: I hear a "no." Leave is not granted.

Senator Lynch-Staunton: Carry on. It does not matter. We get the drift. We get the message. It is the same arrogant bunch.

Senator Doody: If that is the way you want it, that is the way you will have it.

Senator Graham: No one said no. Did you clearly hear a "no?"

The Hon. the Speaker: There is no question that I heard a "no." I confirmed it with the page beside me.

Senator Doody: Could you repeat the question, Your Honour?

Hon. Eric Arthur Berntson (Deputy Leader of the Opposition): Call Order No. 2.

Senator Lynch-Staunton: Carry on.

The Hon. the Speaker: I can repeat the question if you wish, but it is a very strange way of conducting the business of the house. Is that the will of the house?

Hon. Senators: Yes.

The Hon. the Speaker: Is it your pleasure, honourable senators, that Senator Andreychuk be given time to complete her question?

Hon. Senators: Yes.

Senator Gigantès: Reluctantly.

An Hon. Senator: No.

The Hon. the Speaker: Honourable senators, I clearly heard a "no."

Hon. Edward M. Lawson: Honourable senators, I said "no." We had a two-minute extension yesterday that lasted one hour. No.

On motion of Senator Gigantès, debate adjourned.

FOREIGN EXTRATERRITORIAL MEASURES ACT

BILL TO AMEND–SECOND READING

On the Order:

Resuming the debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Perrault, P.C., for the second reading of Bill C-54, to amend the Foreign Extraterritorial Measures Act.

Hon. James F. Kelleher: Honourable senators, I rise today to speak in support of the basic goals of Bill C-54. No nation can be sovereign when another nation can tell it where, when and with whom its citizens can conduct business. Bill C-54 aims to protect Canadians from foreign measures such as the Helms-Burton law. It does so by strengthening the Foreign Extraterritorial Measures Act.

Honourable senators, for several years the United States has directed various trade sanctions against Cuba. At the same time, several American legislators have sought further sanctions against countries that do business with Cuba, often as a result of pressure from their own constituencies. The Helms-Burton law targets companies that make use of Cuban property seized from U.S. citizens after the communist takeover. Two key aspects of that bill affect Canada: First, it lets U.S. citizens sue foreigners for compensation in U.S. courts if they make use of property taken from U.S. citizens; second, it denies entry into the United States to senior executives of companies that traffic in property subject to a U.S. claim.

A private members' bill dealing with similar losses suffered by the United Empire Loyalists more than 200 years ago is now before the other place. If nothing else, that bill serves to underline the outrageous nature of the Helms-Burton law. Indeed, I cannot imagine for one minute the United States standing by and allowing any country to extend its laws against Americans in such a manner.

The U.S. administration itself opposed the Helms-Burton law until last February when Cuba shot down two American aircraft that had flown too close to its air space. While I — and Canada — deplore that action on Cuba's part, it was at that point that respect for the sovereignty of other nations fell victim to domestic politics. The end result is a law that runs counter to the interests not only of Canadian sovereignty, but to the sovereignty of other western nations.

Some Canadian executives have already received letters telling them that they are barred from entering the United States. However, President Clinton has delayed the right-to-sue provisions for six months. He has until January to announce a further delay, and with the heat of an election behind him, it is to be hoped that he will do so.

Honourable senators, this bill will strengthen the Foreign Extraterritorial Measures Act, a law originally passed as Bill C-14 by the then newly elected Conservative government in 1984 as one of its first orders of business. In speaking to Bill C-14 on December 13, 1984, the Honourable John Crosbie said in the other place:

> Yes, we want foreign investment. Yes, we want a better relationship with the United States as an example. However, that does not mean to say that we are not going to defend our own vital national interests or our own Canadian sovereignty.

The law that the PC government passed at that time already gives Ottawa various means to prevent the exercise in Canada of extraterritorial measures by foreign governments. This bill will strengthen that law. This proposed new law will allow Canada's Attorney General to block the enforcement in Canada of judgments handed down under any objectionable foreign law.

Bill C-54 will let Canadians recover in Canadian courts any amounts awarded under those foreign rulings — in other words, a clawback. They can also recover their court costs in both Canada and the foreign country.

Bill C-54 also updates penalties for breaking the Foreign Extraterritorial Measures Act. The purpose of this is to make Canadian companies more likely to follow Canadian laws, and less likely to abide by those of foreign nations. Courts will be given criteria to vary the penalty according to the circumstances.

In closing, I should like to cite words spoken in this place almost 12 years ago by Senator Nurgitz on second reading of Bill C-14. He said:

> Extraterritoriality goes to the heart of Canada's sovereignty and its political and economic independence. It goes beyond the lawyer's question of conflict of laws and beyond a debate centred upon defining internationally accepted rules on the proper limits of a state's authority and jurisdiction. It involves the imposition of one country's political and economic objectives upon Canada and Canadian nationals. It involves the use of economic power in pursuit of domestic and foreign policy imperatives of the country asserting extraterritorial authority. Unilateral legal instruments and documents are the chosen tools, and legal tools demand a legal response.

Honourable senators, I find it regrettable that actions south of the border make measures such as those in this bill necessary. I look forward to committee study of this bill.

The Hon. the Speaker: Does any other senator wish to speak? If not, is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read the second time.

REFERRED TO COMMITTEE

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

On motion of Senator Grafstein, bill referred to the Standing Senate Committee on Foreign 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,"."

Hon. P. Derek Lewis: Honourable senators, I should like to make a few remarks with respect to the amendment proposed by Senator Doody that the report of our standing committee on this matter be amended by way of providing a substitution in the resolution authorizing the proposed constitutional amendment of Term 17 of the Terms of Union of Newfoundland and Canada as contained in the Newfoundland Act.

What I have to say has been already elaborated upon, to a great extent, by Senator Stanbury and others. However, I feel compelled to emphasize some of the points that I consider to be of particular importance to senators in their consideration of this matter.

To understand the situation, we must first look at what exactly the proposed new Term 17 states. Looking at the wording, we find that, as in the present Term 17, it provides that the provincial legislature of Newfoundland has, and is to continue to have, exclusive authority to make laws in relation to education. This exclusive authority is, however, to be qualified by subsequent provisions.

Thus, reading the resolution carefully, we find that in subclause (*a*) thereof, subject to two exceptions, the clause sets out two declarations. One is to the effect that publicly funded schools shall be denominational schools. The second is to the effect that any class of persons having rights under the present Term 17 shall continue to have the right to provide for religious education, activities and observances for the children of that class in those denominational schools. Constitutionally, this basically continues the rights of the protected classes of persons as presently enjoyed under Term 17.

> Subclauses (*b*) and (*c*) of the proposed new Term 17 contain the two exceptions to the foregoing. First, subclause (*b*) provides that:
>
> (*b*) subject to provincial legislation that is uniformly applicable to all schools specifying conditions for the establishment or continued operation of schools,
>
> (*i*) any class of persons referred to in paragraph (*a*) —

that is, those classes presently protected —

> shall have the right to have a publicly funded denominational school established, maintained and operated especially for that class, and
>
> (*ii*) the Legislature may approve the establishment, maintenance and operation of a publicly funded school, whether denominational or non-denominational.

Subclause (*c*) provides that:

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

Here again, in these clauses the rights of the previously protected classes are quite clearly preserved. Clause (*b*) does, of course, provide the legislature with the right of control over administration, particularly as to where schools shall be situated, how big they will be, and how expensively they will be operated. Surely the government, which provides the funds, should have this power. This, however, in no way impedes the constitutionally guaranteed rights of the protected classes of persons to provide religious education.

The effect of Senator Doody's proposed amendment would be to eliminate the provision in the first part of subclause (*b*), which makes the exceptions subject to provincial legislation, and substitute therefor the words "where numbers warrant." This would remove control from the legislature and leave it subject to some mathematical equation beyond control.

• (1450)

Honourable senators, this is not a new suggestion. Those of us who attended the hearings of the committee will recall that this suggestion was addressed by several of the witnesses who appeared before us. Here I would point out that these hearings were held after the resolution had been dealt with and accepted by both the Legislature of Newfoundland and the House of Commons. In fact, in paragraph 2, section 3 of its majority report entitled Minority Rights, our committee dealt extensively with this suggestion. We came to the conclusion that such an amendment to the resolution would be ill-advised.

As you will see from the report, the present wording of the resolution was supported at the hearings not only by the provincial minister of education but also by both the leaders of the two opposition parties in the provincial legislature. Likewise, the suggested substitution of the words "where numbers warrant" was also rejected by all parties. In fact, the minister stated at the hearings that this issue is the crux of the matter, and that such an amendment may, in fact, frustrate the efforts of the government of Newfoundland to go ahead with the reforms it wants to achieve.

It must be remembered that the proposed new Term 17, by its express words, guarantees the rights of the religious groups to continue to provide religious activities in schools, and also the right to unidenominational schools. Although there is provision that the provincial legislature may make legislation relative to how these rights shall be administered, it is to be noted that this provision requires that such legislation be uniform and applicable to all schools. While some question was raised that, at some future time, this might be used to abrogate the rights granted, surely these constitutional rights will be protected by any court.

It is obvious that the resolution for the proposed constitutional amendment has the object of altering the rights in education now held by the various denominations, and removing some of them to the control and aegis of the provincial legislature. This, in effect, would place control in the hands of the people through their elected representatives, where surely the power belongs. As the Right Reverend Donald Harvey, an Anglican bishop of Newfoundland, expressed in the hearings in St. John's, this whole matter is really just a struggle for power. For these reasons alone, we should reject the proposed amendment to the resolution to substitute the words "where numbers warrant."

There is, however, another aspect to the proposed amendment, which concerns protection of minority rights. The committee had the benefit of several knowledgeable witnesses who expressed themselves very clearly on the role of the Senate with respect to protection of minorities and the criteria to be met in considering whether minority rights are fairly dealt with in a reasonable balance. As expressed in the committee majority report, we should evaluate whether there is a minority that has been unreasonably disadvantaged in the process that has been proposed.

Bearing these observations in mind, we should consider the effect of the amendment proposed by Senator Doody. As I said earlier, the amendment would delete, in the proposed Term 17(*b*) of the amending resolution, the authority for the provincial legislature to make laws that are uniformly applicable to all schools specifying conditions for the establishment or continued operation of schools. The object of this clause is, of course, to provide for the administration of schools that may be established or operated under the provisions of the proposed term. In its place would be substituted the words "where numbers warrant." This would effectively destroy the authority of the legislature to provide for such administration.

The worst aspect, however, is that it would effectively destroy the constitutional protection of any small class of persons or denomination that did not meet some unknown measurement of numbers. As the committee has pointed out, one of the seven protected classes of religious denominations in Newfoundland is the Seventh-day Adventist Church, which represents only about 0.1 per cent of the population. If the amendment as proposed by Senator Doody were in effect, in all likelihood this minority would lose the protection that it previously enjoyed. This certainly would be an infringement on minority rights, and it is our duty to protect such rights.

In this respect, I understand that recently the Seventh-day Adventist Church has, on reflection, indicated by letter addressed to Senator Carstairs, and which I think has been circulated, its support for this particular amendment. The reason given, if I understand the letter correctly, is that if the words "where numbers warrant" were not in effect, all their schools would certainly have to close.

It is difficult to follow this proposition. It would appear to me that the opposite would be the case. If their continued existence were to depend on the question of some undetermined numbers, as suggested in the amendment as proposed by Senator Doody, then it follows that they would surely lose their rights; whereas under the proposed wording of the amending resolution, their existence would be subject to such provisions to that effect as the legislature, or the people through the legislature, might enact. In fact, it would be a contradiction on the one hand to say that we want to protect minorities and then, on the other hand, to insert words into the constitution that would clearly adversely affect the rights of one identifiable minority. Here it is to be noted that Senator Kinsella, in answer to a question on this point last Wednesday, was unable to reconcile the two positions.

We certainly should not countenance such a proposition. It must be born in mind that at some future time some other minority group among the protected classes may be reduced in numbers, and so also suffer the possible loss of its status. Accordingly, I feel that we should reject the amendment as proposed by Senator Doody.

Before I close, there is another point that I feel should be made, and that concerns the question raised by Senator Milne last Thursday when she questioned the effect or result of the possible passing by the Senate of an amendment to the amending resolution. Will such an amended resolution be seen as failure on the part of the Senate to adopt a resolution within the 180 days suspensive period, or will it be taken to mean that the Senate has initiated a new amending process by a new resolution? As Senator Milne has said, we should know what we are doing from a procedural point of view.

In this I agree, and it seems to me that before we close debate on the amendment proposed by Senator Doody, we should have clear in our minds not only the effect of such an amendment in itself on minority rights in the education field, but also just exactly what will be the implications of possibly amending the resolution.

Accordingly, I suggest that we immediately implement an inquiry on this constitutional question through a Senate committee, which could report back to the Senate on the possible implications.

Senator Doody: Before December 6?

Senator Lewis: In this way, all senators could appreciate, in view of the provisions of the constitutional amending formula, the consequences of such an amendment.

On motion of Senator Anderson, debate adjourned.

• (1500)

EMPLOYMENT INSURANCE (FISHING) REGULATIONS

REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE ADOPTED

On the Order:

> Resuming the debate on the consideration of the seventh report of the Standing Senate Committee on Social Affairs, Science and Technology (*Employment Insurance (Fishing) Regulations*), presented in the Senate on October 28, 1996.—(*Honourable Senator Bosa*).

Hon. Peter Bosa: Honourable senators, Senator Simard took part in the debate on the seventh report of the Standing Senate Committee on Social Affairs, Science and Technology concerning fishing regulations. Senator Simard expressed his disappointment that the committee had rejected a motion to call additional witnesses to the committee regarding those regulations.

The process that took place prior to the adoption of those regulations consisted of three phases. First, a task force was headed by Mr. Richard Cashin, former president of the Fish, Food and Allied Workers Union. That task force travelled extensively throughout Canada to gather information about the rules that would be applied. They presented their report in November 1993. The department, together with the ministry, reviewed those recommendations and they form part of the regulations before us today. Following that, the department sent out letters to all the provincial governments that have responsibility for the fishing regulations. They sent letters to every union, every member of the industry, and to independent fishers. No responses were received by the department. In fact, the regional directors of the Department of Human Resources solicited responses from the interested parties, but none were received.

There was then another phase in which the department sent a package of information on the regulations to the members of the other place. Each one received all the information pertinent to the regulations. Again, there were no responses, negative or positive, regarding the regulations. Consequently, the regulations became formally adopted by Parliament.

An inquiry initiated by Senator Comeau, requesting that the regulations be considered by the Standing Senate Committee on Social Affairs, Science and Technology went forward, and these regulations were considered by the committee on Thursday, October 4. A motion was made by some members of the committee to call the industry people before the committee to testify. Because none of the senators that took part in the committee were able to produce any evidence that there was a need to do that — that is to say, no one forwarded a name saying that this person or that union wanted to appear before the committee — the majority of the members of the committee voted against that motion.

There was another complaint about what had happened, namely, that the regulations were sent to the other place but not to the Senate.

In 1990, an intervention was made by Senator MacEachen, who was then the Leader of the Opposition in the Senate. He put forward some recommendations that went over to the other place, including a recommendation that the regulations be considered by both the House and the Senate. Those recommendations were amended in the House, and the government of the day saw fit to exclude the Senate from considering such regulations. That is the fact of the story.

Senator Berntson: I agree with Senator MacEachen.

Senator Bosa: The government of the day excluded the Senate from the process of considering the regulations.

Senator Lynch-Staunton: Change it back, then!

Senator Berntson: Yes. It should be sent back.

Hon. Gérald J. Comeau: Honourable senators, I listened carefully to what my honourable colleague from Toronto had to say regarding this matter, and I want to add a few comments on the process.

First, my honourable colleague from Toronto referred to Richard Cashin, the former president of the Fish, Food and Allied Workers Union of Newfoundland. Yes, in 1993, he did make some recommendations on the future of the UI. However, I should like to note what the current president of the Fish, Food and Allied Workers Union of Newfoundland has said about the UIC regulations to which the honourable senator has referred.

The current president, Mr. McCurdy, has indicated publicly — it was reported by the media and I quoted him at the committee hearing last week — that these regulations should have been brought before the fishermen in the industry so that they would have an opportunity, if not to criticize, at least to understand the changes that were brought. Some of these changes are written in difficult language. He has publicly said that this matter should have been brought before the industry.

Regarding letters to provincial governments, I should like to advise the honourable senator from Toronto that, while provincial governments were sent the information package, every last one of these Atlantic Canadian governments is a Liberal government. Not one of them is the kind of government that would show any kind of opposition to the current government here in Ottawa. As a matter of fact, they seem to be at their beck and call every time they are needed, whether it be for the GST, or whatever.

My colleague says that every member of the industry was contacted. That is not the case. I looked at the list. Not every fisherman in the industry was contacted. Yes, a certain number of groups representing fishing interests were contacted and received the information package, but I called fishing people in my region to find out if they had received a package or had been advised on the package, and all of them replied in the negative. In fact, they were not even aware that such a package had been sent from the other place.

Packages were sent to members of Parliament. Every last member of Parliament in Atlantic Canada — that is, all 31 of them — were sent the package except for one opposition member named Elsie Wayne. They were the only ones to be sent

the package. Senators from Atlantic Canada were specifically excluded. This arose during testimony last week before the Standing Senate Committee on Social Affairs, Science and Technology. Senators were specifically excluded from being given any kind of information concerning what was happening in their region.

We must not forget that senators represent regions and are supposed to look after the interests of their regions. Why would senators from Atlantic Canada not be sent a copy of this information package so that we could look at it and be aware of it? We had to learn about it by reading the *Gazette*.

My honourable friend also referred to the motion to hear witnesses. Yes, there was a motion to hear witnesses. We did present a motion. Basically, we asked our colleagues from the other side to invite fishing interests to appear before the committee to tell us whether or not they appreciated the package. We wanted to give them an opportunity that was not extended to them by the other place.

The other place vehemently disapproved of having fishing interests come to Ottawa to question departmental officials on what was happening. Neither this place nor the other place gave fishing interests an opportunity to appear before us. This should not be viewed as complete acceptance. If we had invited the fishing interests to come to Ottawa and they had indicated great pleasure at losing $33 million from their UI fund, we would have had egg on our face. However, they were not given the opportunity to come here to express any kind of opinion.

The honourable senator mentioned that we were asked to present names of people who wanted to appear. That is not the case. I suggest that honourable senators check the record of the proceedings of the committee to see whether we were asked to present names of people who wished to appear before the committee. It was said that none had replied to us, but the notices had only been sent out in the past few days. I am quite sure that the fishing community would have shown an interest, but they were not given the opportunity. All five Liberal members on the committee voted against giving the fishing industry the opportunity to appear before us. That is what happened last week and it is on the record. Anyone can read the proceedings of the committee.

The final point that I would like to make is that it has been said that previous governments have set a precedent for this behaviour. Is the current government's excuse that previous governments have established precedents for this type of conduct? It must be kept in mind that those previous governments are not the government today. The government of today ran on the platform that it would do things differently, that it would be open and transparent and give Canadians the opportunity to express their opinions on what it is doing in Ottawa.

Do not decide how to treat Canadians today based on the record of previous governments. In fact, the government should disregard past practice, throw out the precedents and operate on the basis of the promises in the Red Book; that is, to be open and transparent and to provide an opportunity for Canadians to express their opinions on what they are doing in Ottawa.

Senator Bosa: Honourable senators, I wish to correct a few of the points made by Senator Comeau. First, there was not before the committee a recommendation to reverse the previous government's exclusion of the Senate from consideration of the fishing regulations. However, there is nothing to prevent any honourable senator from initiating an inquiry to reassert that the Senate is one of the chambers of Parliament.

Second, we were not opposed to hearing witnesses. If Senator Comeau had told us that he had received one phone call —

The Hon. the Acting Speaker: Honourable senators, it is a senator's privilege to clarify points that may have been misinterpreted. That has been a feature of parliamentary debate for years. However, this is not an opportunity to introduce a new element of debate. I recognized Senator Bosa to afford him the opportunity to set the record straight, as he understood it, but he should not use the opportunity to introduce new elements, unless there is unanimous consent.

Senator Bosa: Honourable senators, I was only clarifying a point made by Senator Comeau. He said that we denied members of the industry the opportunity to appear before the committee. If Senator Comeau or any other member of the committee had stated that a person was interested in appearing before the committee, we would not have voted against his or her appearance.

Senator Comeau: That is easy to say now.

Hon. Mabel M. DeWare: Honourable senators, the committee's mandate was to examine the regulations to the bill. I believe that has been done. I now move the adoption of this report.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

The Senate adjourned until tomorrow at 2 p.m.

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