



CANADA

Debates of the Senate

2nd SESSION

•

35th PARLIAMENT

•

VOLUME 135

•

NUMBER 50

OFFICIAL REPORT
(HANSARD)

Wednesday, November 6, 1996

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THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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

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

Published by the Senate

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

Also available on the Internet: <http://www.parl.gc.ca>

THE SENATE

Wednesday, November 6, 1996

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

Prayers.

SENATORS' STATEMENTS

WAR AND REMEMBRANCE

Hon. Duncan J. Jessiman: Honourable senators, I rise today to speak about remembrance. As a very young boy, I was taught by my father to remember those who made the ultimate sacrifice in the First World War and, in particular, an uncle who died in that war several years before I was born.

Today, I remember my friends and school chums who made the same sacrifice in World War II. In particular, I remember Flight Lieutenant Ted Tyndal, my best friend; Flight Lieutenant Campbell McKinnon; and Flight Lieutenant Bob Chambers, all of whom played on the same championship high school hockey team with me in Winnipeg in the 1938-39 school year.

I remember the several naval officers and personnel that I served with in Canada, England and France and, in particular, the senior officer of motor torpedo boat *Flotilla*, and a number of his men who were killed by the gunfire from a German trawler just off the hook of Holland in February 1944. I was on loan at the time to the Royal Navy and was serving on a motor gunboat stationed a mere 20 feet behind the MTB that caught most of the fire from the trawler.

My recollection at the time was that the MTB had blown up and that all members aboard had perished. The next day we found out that the first officer, who was not on the bridge at the time, and a few others, survived the disaster and were able to bring back that badly damaged motor torpedo boat. The senior officer, by the way, was 21 years of age and had earned a Distinguished Service Cross.

• (1340)

I remember Lieutenant David Killam, DSC, from Vancouver, and Lieutenant Michael Hunt from Ontario, and a number of their crew. Their motor torpedo boat was blown up in the beachhead a day or two following D-Day.

I remember Lieutenant William Hall from Winnipeg, who was serving on motor torpedo boat No. 462 in January, 1945, the boat of which I had been the first officer from the time of its commission in March, 1944 until November, 1944. Bill was killed, as were a number of our crew, when 12 motor torpedo boats blew up in the harbour at Ostend, in Belgium. Sixty other

naval personnel, both Canadian and British, were killed at that time.

I also remember many others who died as a result of enemy action at sea and in the air.

I remember the devastation caused in London as a result of the V-1 and V-2 bombs. The V-1s were called "doodlebugs," and you could see and hear them coming. As soon as their engine stopped, you knew it was only a matter of seconds before an explosion would take place. The V-2s, on the other hand, gave no warning whatsoever. All one heard was the explosion.

It is important that we do remember, and that generations to follow should also remember. The reason that we should remember is ably described in an article I read a few days ago. The author is speaking about the First World War, the Second World War, and the Korean war. He says:

We must remember. If we do not, the sacrifice of in excess of one hundred thousand Canadian lives will be meaningless. They died for us, for their homes and families and friends, for a collection of traditions they cherished and a future they believed in; they died for Canada. The meaning of their sacrifice rests with our collective national consciousness; our future is their monument.

I will close my remarks by reading the lines written by Laurence Binyon respecting those who were killed in action during the First World War:

They shall grow not old, as we that are left grow old:
Age shall not weary them, nor the years condemn.
At the going down of the sun and in the morning
We will remember them.

GOODS AND SERVICES TAX

IMPACT OF HARMONIZED SALES TAX ON MERCHANTS AND CONSUMERS IN ATLANTIC PROVINCES

Hon. Erminie J. Cohen: Honourable senators, the people of New Brunswick were led to believe that the Liberals would scrap the GST. However, there is a big difference between scrapping a tax and hiding it in the price.

The new harmonized tax looks like a bargain at first, as the combined rate of 15 per cent is less than the 18 we pay now. However, that new tax will apply to many things that New Brunswick does not now tax — books, fuel, electricity, clothing under \$100, funerals, and haircuts, to cite but a few examples.

When the government in Ottawa brought in the GST, they expanded the sales tax credit that they pay to low income earners and, as a result, those low income earners did not pay any more under the new tax than they had paid under the hidden tax that the GST replaced. New Brunswick's harmonized tax will take more money out of the pockets of such low income earners, who spend a larger percentage of their income on things that are now PST exempt, but the New Brunswick government has yet to give any details as to what kind of relief they will offer the poor.

Local governments will now pay sales tax on the services they contract out. The New Brunswick government refuses to compensate them, with the result that property taxes will likely rise.

Under the federal GST, part of the tax on new homes is rebated. Unlike Nova Scotia, the Government of New Brunswick refuses to offer a similar rebate, and that will drive up the cost of new housing.

Honourable senators, make no mistake about it: Tax-included pricing will drive up the cost of doing business in my province.

Next April, retailers will be required to reticket everything on their shelves at their own expense. I feel sorry for the clerk who will be turning over hundreds of Hallmark cards. This may come as a surprise to those in the federal and provincial finance departments, but many goods arrive at stores with the price already on them — a price that does not include tax.

In the future, one of two things will happen: In some cases, goods shipped to New Brunswick, Nova Scotia and Newfoundland will need to have separate packaging with separate bar codes, differing from the other provinces, and that will add to distribution costs. You can bet that consumers will end up paying for those extra costs in the end. In other cases, merchants, at their own expense, will reticket incoming goods that otherwise would go directly onto the shelves. Either way, the cost of doing business in Atlantic Canada is about to jump. Sooner or later, that will work its way into prices.

For national retailers, the cost of printing flyers and catalogues is also about to take a giant leap. Canadian Tire, for example, will now need four catalogues rather than two: English and French for most of Atlantic Canada, and English and French for the rest of the country.

Can you imagine the confusion as New Brunswickers listen to TV and radio advertisements originating in other provinces? I cannot wait to see how the shopping channels handle this situation.

The changes now taking place in New Brunswick, Nova Scotia, and Newfoundland are bound to create tensions with the rest of the country. Businesses selling into these three provinces from elsewhere will be required to collect and remit both taxes. No such burden will be imposed upon merchants from the three harmonized provinces who sell to the rest of the country. This may well —

The Hon. the Speaker: Honourable senator Cohen, I am sorry, but the three-minute period allowed for your statement has expired.

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

Hon. Senators: Agreed.

Senator Cohen: Thank you, honourable senators.

This may well be branded as a barrier to interprovincial trade, and could lead to retaliatory measures.

Honourable senators, I can see the argument for a harmonized sales tax for those provinces that want it, and I can see the argument for including the tax in the price of goods if every province agreed to do it at the same time, and at the same rate of tax.

Honourable senators, the New Brunswick government should do to the HST what Jean Chrétien promised to do to the GST: That is, scrap it.

Hon. Eymard G. Corbin: Honourable senators, I am always amazed at comments made in this house about the policies of provincial governments. We have just heard comments and reflections to that effect.

By the way, the honourable senator's remarks just now were a carbon copy of the remarks made by Senator DeWare last week in response to a speech that I had made. What is advanced by repeating this sort of thing? We are still stuck with an ignominious tax that was imposed on the Canadian people by the previous government.

Senator Lynch-Staunton: Debate!

Senator Corbin: I am not debating; I am looking at the facts, and I am making an honest-to-goodness, personal statement.

The fact of the matter is — and I may be repeating some of the remarks I made last week — that this government did not know beforehand the depth of the debt that it would inherit from the previous government. Inasmuch as it has promised to address the question of the tax on books, this government has made a commitment: it has moved, it is going forward, it is addressing the more pressing matters, and it will continue in that path until we have resolved the problem created by the imposition of the GST by the previous government.

Senator Cohen: May I respond, honourable senators?

The Hon. the Speaker: Honourable senators, the time is for Senators' Statements, not debate. The rule is very clear in that regard. Honourable senators are, of course, free to make their statements but, in doing so, they should not refer to statements made by other senators. If they make a statement that can stand by itself, that would be in order.

ROUTINE PROCEEDINGS

FOREIGN EXTRATERRITORIAL MEASURES ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. John B. Stewart, Chairman of the Standing Senate Committee on Foreign Affairs, presented the following report:

Wednesday, November 6, 1996

The Standing Senate Committee on Foreign Affairs has the honour to present its

THIRD REPORT

Your Committee, to which was referred the Bill C-54, An Act to amend the Foreign Extraterritorial Measures Act, has examined the said Bill in obedience to its Order of Reference dated Wednesday, October 30, 1996, and now reports the same without amendment.

Respectfully submitted,

JOHN B. STEWART
Chairman

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

On motion of Senator Grafstein, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

• (1350)

QUESTION PERIOD

THE SENATE

ABSENCE OF GOVERNMENT LEADER

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, as all honourable senators can see, the seat next to me is again vacant. This is due to the illness and obvious unavoidable absence of Senator Fairbairn. As all honourable senators know, if she could be here, she would be here. It is to be hoped that she will be well and with us tomorrow.

Senator Lynch-Staunton: We wish her well.

Hon. Eymard G. Corbin: Honourable senators, I ask, on behalf of all of us, that the Deputy Leader convey our best wishes to Senator Fairbairn on the occasion of her birthday today.

Hon. Senators: Hear, hear!

Senator Graham: Honourable senators, I would be happy to do so. Not only will I convey your best wishes, but I will tell her that we were unanimous on this particular occasion.

ANSWERS TO ORDER PAPER QUESTIONS TABLED

PEARSON AIRPORT AGREEMENTS—NIXON REPORT

Hon. B. Alasdair Graham (Deputy Leader of the Government) tabled the answer to Question No. 55 on the Order Paper—by Senator Tkachuk.

SPECIAL SENATE COMMITTEE ON PEARSON AIRPORT AGREEMENTS—LEGAL ASSISTANCE TO GOVERNMENT

Hon. B. Alasdair Graham (Deputy Leader of the Government) tabled the answer to Question No. 56 on the Order Paper—by Senator Tkachuk.

PEARSON AIRPORT AGREEMENTS—ACCOUNTING ASSISTANCE

Hon. B. Alasdair Graham (Deputy Leader of the Government) tabled the answer to Question No. 57 on the Order Paper—by Senator Tkachuk.

PEARSON AIRPORT AGREEMENTS—ASSISTANCE OF FEDERAL CIVIL SERVICE

Hon. B. Alasdair Graham (Deputy Leader of the Government) tabled the answer to Question No. 58 on the Order Paper—by Senator Tkachuk.

PEARSON AIRPORT AGREEMENTS — LEGAL ACTION

Hon. B. Alasdair Graham (Deputy Leader of the Government) tabled the answer to Question No. 59 on the Order Paper—by Senator Tkachuk.

ORDERS OF THE DAY

YUKON QUARTZ MINING ACT YUKON PLACER MINING ACT

BILL TO AMEND—THIRD READING

Hon. B. Alasdair Graham (Deputy Leader of the Government) moved the third reading of Bill C-6, to amend the Yukon Quartz Mining Act and the Yukon Placer Mining Act.

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

Motion agreed to and bill read third time and passed.

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 (*amendment to the Constitution of Canada, Term 17 of the Terms of Union of Newfoundland with Canada*), 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,”;

And on the subamendment of the Honourable Senator Cogger, seconded by the Honourable Senator Bolduc, that the motion in amendment be amended by substituting for the words “with the following amendment:” the words “with the following amendments: (a)” and by removing the period at the end thereof and adding the following words:

; and

(b) Delete the words “to direct” in paragraph (c) of Term 17 and substitute therefor the words “to determine and to direct”.

Hon. Eugene Whelan: Honourable senators, some may ask, “Who would rush in where angels fear to tread?” However, it is my pleasure to rise and speak about the proposed amendment to Term 17.

Those of you who have read my book will know that I started my career as an elected member of the separate school board in Anderdon Township near Amherstburg, Ontario, a town which celebrates its bicentennial this year. The town stands where Fort Malden once stood, when it had 1,000 people and the city of Detroit had a British outpost of three soldiers. It is where we stopped the Americans in the War of 1812.

I was elected to that school board a long time ago, when I was 21. The fundamental goal of education has not changed: It is still to help young Canadians to attain excellence in their chosen fields and to equip them to lead this country, now, into the next century. We all know that the challenges faced by our students are greater than they have ever been. The global economy means that they must be equipped to meet competition from all over the world. The task we give our educators is more difficult than it has ever been before.

I am Roman Catholic. I went to a school begun by my grandmother. She took up a collection in the community and had a log school built on Squire Cunningham’s farm, because they had no land of their own. The one person in the community who could read and write became the teacher. It was supposed to be a Catholic school, but because it was closer for other students whose families were non-Catholic, they came to that school and were educated there. The farmers who were trustees of the school board at that time did not care. They were sharing their educational facilities in the true Canadian spirit, the way we built this country.

I also received, as humbly as I can say, an award on March 25, 1990. The Christian Culture Gold Medal Award was given by Assumption College of the University in Windsor for my dedication to a Christian way of life in my works. Like any Canadian and especially one who is also a member of a religious minority, I am very conscious of the possibility of the tyranny of the majority in opposition to one or more minority groups.

Honourable senators, I am satisfied that the proposed Term 17 does not oppress any minority group. Does it change the status quo? Of course it does. However, the fact that minority rights are affected by the amendment does not mean that any minority will be oppressed. That, as the independent legal experts who appeared before the Standing Senate Committee on Legal and Constitutional Affairs testified, is the crucial issue for our consideration.

There are now seven protected denominations in Newfoundland. They are Roman Catholic, Anglican, United Church, Presbyterian, Salvation Army, Seventh-day Adventist and Pentecostal denominations. The powers of these seven, unelected, protected denominations over education are extraordinarily extensive.

In talking about the different religious groups, I am reminded of a foreigner who had visited Canada to see how we live. When I took him to my home town of Amherstburg, he wanted to know how many churches there were and how they taught their religion. I drove him around and showed him the 12 different churches in our town of 8,000. He wanted to know what effect they had on the politicians. I said that we listen to them and, if we do not agree with them, we tell them. When I go to my own church, even if I do not like the sermon that is being

given, I find that it is still a great place to meditate about what I have to do the next day in Parliament or in my personal life. That man could not believe that we could live in such freedom and with such free expression of opinion. He went back home and tried to implant that system in his own country. That was 1983. The man's name, Mikhail Gorbachev. He could not understand our freedom. He said that he never would have believed our freedom to participate in our churches and our various religious ways if he had not come to Canada and seen it for himself.

In particular, these denominations have been constitutionally guaranteed the right to a per capita draw on the public purse for capital purposes. As Senator Rompkey has described his own personal experiences, when a superintendent of education wants to build a new school, he or she does not go to the Government of Newfoundland and Labrador, even though the government collects the taxes and has to answer to the people of Newfoundland for how those taxes are spent. No, the superintendent of education has to go to the denominational education council for permission. As a result of the entrenched right to per capita apportionment, any capital expenditure for one denomination must be matched with per capita shares to each of the other protected denominations.

Honourable senators, this system works fine when you have unlimited funds available; however, it is simply not workable in today's economic climate, especially the economic climate of Newfoundland and Labrador.

Those of you who follow what is going on in Ontario with the present Conservative government will be aware of what it is doing regarding education, without any vote or authorization from the electorate. I believe the provincial government of Ontario has the sympathy of the majority of the people to drastically change the education system in the province.

Honourable senators, the powers of denominational councils are not only related to building schools. School boards cannot acquire, dispose of property or borrow anything over \$5,000 without first obtaining approval of the appropriate denominational education council. The boundaries of school districts cannot be changed without the approval of denominational education councils. The constitutions of school boards have to be approved by the denominational education council. The school trustees must be recommended by the denominational education councils. To dissolve a school board or even remove a trustee, you need the approval of the denominational education council. School boards have to submit annual statements of account to the denominational education councils. Anyone who wants to teach in the province must get the approval of one of the denominational education councils before they can receive a teaching certificate for the province.

These are very extensive rights, and the denominational education councils are not even elected. The people of Newfoundland and Labrador want to change this structure. They want to have these rights exercised by elected, accountable representatives, the members of the legislative assembly. Would

it not be ironic if the Senate, an unelected body, were to ignore the wishes of two elected assemblies in order that the unelected denominational councils could hold on to their current power over education in Newfoundland?

Honourable senators, the proposal before us was not arrived at overnight. It was not arrived at behind closed doors or without extensive public consultation. This proposal was the result of years of public discussion. Indeed, the Newfoundland royal commission that examined the state of education in Newfoundland and Labrador first held public hearings in November 1990, exactly six years ago. There was public debate around the royal commission which, according to the leader of the Conservative official opposition in Newfoundland identified some \$14.5 million in annualized savings that it felt the government could not easily achieve under the existing Term 17. There were discussions with the churches. There was a public referendum and, most recently, a general election in which this constitutional amendment was part of the platform.

Newfoundlanders have stated, over and over again, that they want this change and they want this amendment.

Let us be clear that the proposed Term 17 will not eliminate church involvement in education in Newfoundland and Labrador. The Minister of Education, the Honourable Roger Grimes, told the Standing Senate Committee on Legal and Constitutional Affairs that the long, proud history of church involvement in education in his province will not be broken by this amendment.

Honourable senators, the new Term 17 is very clear. It states in paragraph (a) that:

...schools established, maintained and operated with public funds shall be denominational schools, and any class having rights under this Term as it is read on January 1, 1995 —

that is, the seven protected denominations I listed earlier —

shall continue to have the right to provide for religious education, activities and observances for the children of that class in those schools.

Honourable senators, as children and adults, we have played together. We can pray together or separately. We have fought together. We have fought wars together regardless of religious background, and we have built one of the greatest countries in the world using this principle.

These are very extensive rights, honourable senators, as others have stated in this debate and as the Standing Senate Committee on Legal and Constitutional Affairs was told during its hearings on this subject. These are the core values of denominational rights as defined by the Supreme Court of Canada. There can be no question on the proposed Term 17 of opposing religious minorities. The protected denominations will continue to enjoy very extensive rights in the Newfoundland schools.

In addition, there will be a constitutionally entrenched right to single or unidenominational schools in which denominations will have the right, in addition to these other rights, to direct the teaching of aspects of the curriculum affecting religious beliefs, student admission policy and the assignment and dismissal of teachers.

There will be change with the passage of the new Term 17, and minority rights will be affected. However, I challenge anyone to tell me how these protected denominations will be oppressed by the change.

The Leader of the Official Opposition in Newfoundland, Mr. Loyola Sullivan, is a Roman Catholic, a parent with three children in the Roman Catholic school system and a former teacher who taught for 20 years in the Roman Catholic system. He told the Standing Senate Committee on Legal and Constitutional Affairs:

I do not believe that this amendment takes religion out of the schools. It takes away certain control over that, but not the religious practices and observances that are fundamental to the beliefs in a particular faith.

Honourable senators, we have had an extensive debate on this issue. I think it is fair to say that there has been a full and frank airing of views, both among the witnesses who appeared before the Standing Senate Committee on Legal and Constitutional Affairs and here in this chamber. Some senators disagree with the decision of the Newfoundland people to change their system of education. Of course, as is always the case, there are people in Newfoundland who prefer the status quo. Some senators think the wording should be changed and can find areas of support for their views in Newfoundland and Labrador.

Our role is not to second-guess Newfoundlanders as to how their education system should be structured. It is not to impose our views of education on their children. Our role is to uphold our democratic system, and within that system we have clear but limited responsibilities. We in the Senate are responsible for protecting provincial rights and minority rights. I have talked about the impact of this amendment on minority rights. They will be affected by the change, but they definitely will not be oppressed by the new Term 17.

• (1410)

I want to speak about provincial rights. These are particularly important here, for the subject-matter is education. Under the Constitution, education is completely within provincial jurisdiction. As a federalist concerned about unity in the country, I have some reservations about this authority, when I compare us to the big neighbour to the south, where the federal government has some control over education and there is a federal law requiring the taking of the Oath of Allegiance to the country every morning when school begins. That is something that has never occurred in most of our schools in Canada, unless a province so determined that it shall be.

Nevertheless, the Newfoundland legislature has spoken on this issue, not just once but several times. Each time, with increasing vigour, the elected representatives have made their views known. They support the proposed Term 17 and they want it passed by the Parliament of Canada so they can proceed with the desired changes to the education system in their province.

When the resolution first came before the Newfoundland House of Assembly, it was passed in a free vote by a comfortable margin of 31 to 20. That was on October 31, 1995. Then on May 23, the House of Assembly unanimously passed a resolution asking the Parliament of Canada to deal quickly with the amendment to Term 17. Most recently, when the Standing Senate Committee on Legal and Constitutional Affairs travelled to St. John's, the leaders of both opposition parties in the House of Assembly came to testify, expressing their support for the amendment to Term 17 and urging its passage.

Mr. Loyola Sullivan, leader of the Conservatives, the official opposition in the province, was clear and precise in his testimony. In enunciating the reasons why the Conservative caucus decided to support the passage of the revised Term 17, he emphasized the importance of respecting the vote of the members of the House of Assembly in October 1995. He said:

After carefully weighing these and other arguments, our caucus reached a decision to support passage of the revised Term 17. We are satisfied that, on balance, the issues raised favour supporting the revised Term 17. In addition, there are other arguments based on events which have occurred since the debate in the legislature in October which lend weight to this position.

First, we respect the vote of the MHAs in October. Remember, the referendum was not binding on the House of Assembly.

The Hon. the Speaker: Honourable Senator Whelan, I am sorry to interrupt you, but your 15-minute speaking period is up.

Senator Whelan: May I have leave to continue?

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

Senator Lynch-Staunton: Unlimited.

Senator Whelan: Thank you, honourable senators.

Mr. Sullivan went on to say:

When we went into the House in October to debate this issue, amending Term 17 was nothing more than a proposal that had received majority support in a referendum. In the house, members defined the issue and made their arguments.

Many of us, as members, after weighing the circumstances, voted in accordance with the wishes of the constituents in our respective districts. There were yeas and nays on both sides of the House.

In the end, amending Term 17 was chosen as our course of action by a majority of MHAs. Amending Term 17 had become more than a proposal. It was the chosen course of action of the legislature on behalf of all Newfoundlanders and Labradorians. We have made our decision and the issue is now in the hands of the federal Parliament.

Those excerpts are from the committee proceedings of July 11, 1996.

Mr. Sullivan also emphasized to the committee the importance of the general election that took place in the province. As he described it:

The denominations and the general public had the opportunity during the election campaign to challenge the government's position on Term 17 and make the matter a major issue of contention. They did not. There was in the election campaign no strong movement to have the Term 17 resolution rescinded. In returning the government to office with a new mandate, the people of this province, in effect, approved the government's Term 17 amendment strategy.

Later, Mr. Sullivan elaborated on this. He described how before the election his party advocated not proceeding by way of constitutional change. However, this position failed to attract supporters. He said:

It never became an issue in my district, which was probably a 97 per cent Roman Catholic district. I may have had two or three calls or representations in the last three years on the issue in my district overall.

There were numerous other issues, and this was well down the list. It was not even a significant issue of discussion during the campaign. For whatever reason, I do not know, but it was not.

I repeat what he said:

...I do not know, but it was not. It seemed that the government was going to pursue a course of action, and it seems that was a fait accompli and that the people were willing to accept it. That is how I read the situation, and that is what happened.

Mr. Jack Harris, the leader of the New Democratic Party of Newfoundland and Labrador, also thought the issue important enough to come and appear before the Standing Senate

Committee on Legal and Constitutional Affairs to express his support for the proposed Term 17. He also stated that during the election:

As others have said, it was not a matter of debate. There was no question about the statement contained quite clearly in the Liberal manifesto. There was no move to stop Term 17 during the election.

Honourable senators, we have a proposal before us that enjoys the support of all elected representatives in the Newfoundland legislature, both from the governing party and the two opposition parties. Whether individual members did or did not vote for it originally, they are now unanimously behind its passage. I think we can all agree that this is very unusual. It must weigh heavily when we exercise our role as defenders of provincial rights.

I also want to comment briefly on Senator Doody's motion in amendment. Honourable senators, his proposal is not new. As stated in the record, it was debated extensively in the Newfoundland House of Assembly, and it was rejected. It would undermine the whole purpose of the change to Term 17. We know in advance it is not acceptable to the Newfoundland House of Assembly.

Honourable senators, I should like to conclude with one final quotation, again from Mr. Sullivan, the Leader of the Official Opposition in Newfoundland and Labrador. He said:

I look at this decision based on what will be best for the children of our province in tough financial times, with declining enrolments. We want to deliver the best possible education without stripping away certain religious rights or practices that have developed in our school system over the years. That was the gist of our discussion. We debated this at great length in caucus; I discussed it personally. I have been part of the system for 20 years. I had three kids in the system. I served as our education critic, although I am now in a different capacity. I have looked at this from numerous angles and numerous perspectives.

Our caucus feels that we should proceed and that it is in our best interests. We cannot be blinded by other factors. We must look at the goal, where we need to be and what we need to do, and not become deterred. As much as some people might like to let political or other events influence their final decision, it is important that we not stray from the course because our children will suffer as a result.

• (1420)

These proceedings, honourable senators, took place on July 11, 1996. As humbly as I can say it, that was a great day for Canada. July 11 was a famous day, and the statement was made on the birthday of a Canadian who now says thank you.

Hon. Marcel Prud'homme: Honourable senators, I should like to ask a question of the Honourable Senator Whelan. In fact, I shall ask three questions, the third question being more important than the first.

What is the role of the Senate, according to my honourable friend? What is the meaning of a Constitution? Last but not least, does my honourable friend mean to say that the National Assembly of Newfoundland, time and again, has spoken in favour of this amendment? Twenty out of thirty-one members — that means all of the cabinet — voted for it in a free vote in October of 1995.

Senator Rompkey: It was unanimous.

Senator Prud'homme: I am quoting the Honourable Senator Whelan when he mentioned 20 out of 31 members voting in October of 1995. If the honourable senator wants to debate with me, let him wait until I participate in the debate, and then he will have a nice debate.

To get back to my question, I am referring to the debate of Senator Whelan, honourable senators. In his speech, he mentioned 20 members out of 31. That is his own speech. I did not write his speech, of course.

Does my honourable friend mean to suggest that if the National Assembly of Quebec were to vote, time and time again, to dispense with section 133 of the British North America Act, 1867, they could do so by proceeding with a referendum in Quebec, and the referendum question would be on the dispensation of Quebec from section 133. That section creates an obligation for Quebec, while for Ontario, for example, it does not create such an obligation.

As a matter of fact, my honourable friend's neighbour, Senator Hervieux-Payette, went to see Mr. William Davis once, accompanied by David Berger and five others, to beg Mr. Davis to accept that Ontario would also be subject to that same section 133. I remember the past. I remember that they cornered Mr. Davis at the airport and said, "Do like Quebec: Get under section 133." Mr. Davis said, "No, thank you." That is why I asked what is meant by "a Constitution." Does the honourable senator mean to suggest that even if Quebec were to ask, time and again, and to vote in the National Assembly, unanimously or otherwise, and even to go to a referendum, that that would be enough for him to say here in the Senate "No more section 133"?

What is the meaning of a Constitution? Why was this right given specifically to the people of Newfoundland in 1949? Was it because, on the second referendum, there were not enough votes, and it was enough to carry the day in favour of Canada by promising that the people would keep their religious system? This is a very basic question.

Senator Whelan: Honourable senators, the first vote was 30 to 21. All three leaders endorsed it. I do not think it is the role

of the Senate to stop that kind of democratic action, whether it be in Newfoundland, Quebec or wherever. There is not much more I can say about this. I do not pretend to be a constitutional expert. As I said in my speech, I have some strong reservations about the rights the provinces have over education. I have relatives who sit in different state legislatures in the United States of America, and I know where their children go to school. I know why they have such strong allegiance to their country. From the time a young girl or boy can hold a flag, they wave it, and their schools make them take the Oath of Allegiance every day. We have nothing like that here in Canada. We are an amazing country. It is amazing that we have built a country with the kind of unity that we enjoy; a country which is the envy of the world.

Hon. C. William Doody: Honourable senators, perhaps the Honourable Senator Whelan would accept another question?

I listened with great interest to Senator Whelan's description of the school system in Ontario where people shared schools. That is not a revelation to me. That has been going on in Newfoundland since long before I was born. The people have been sharing schools regardless of denomination.

However, can Senator Whelan not see a difference between reorganizing an educational system and the stripping away of a constitutionally guaranteed minority right? What we are doing with the new Term 17 is we are taking away the protection that was guaranteed to the people of Newfoundland when they accepted a pact with the people of Canada. That will be removed under this legislation, and that is the difference between the reorganization of a school system and the deprivation of minority rights, as is now happening to my people in Newfoundland.

Senator Whelan: I am willing to accept the word of Mr. Sullivan, the leader of the Conservatives in Newfoundland, who said that in Newfoundland he is much closer to the subject than I am. I have read many different articles on this situation, and he seems very firm and very supportive of this initiative. That is good enough for me.

Senator Doody: I hope my friend will follow Conservative advice on everything that goes on over the next few years.

Hon. Noël A. Kinsella: Honourable senators, my question is for Senator Whelan.

The Government of Newfoundland and Labrador circulated a document to the people of that province during the referendum. It was entitled "The Education Referendum." The third panel of that document states:

However, parents may choose schools of their own denomination where numbers warrant...

This was the written offer that the government gave to the people in writing during the referendum.

Premier Tobin spoke on the same topic in an interview on CBC radio on May 15, 1996, with Jason Moscovitz. During that interview, Mr. Moscovitz asked Premier Tobin:

You're not getting rid of Catholic schools?

Premier Tobin replied:

No. Where numbers warrant under the amendment as is proposed, if the parents so decide and that's what it comes down to a decision by the parents... yes, there's provision here... where numbers warrant, and where parents decide the continuation of denominational schools...

How do you respond to these two categorical, clear statements that indicated to the communities, the classes of persons who have denominational school rights, that "If you support this change, we will guarantee that denominational schools will continue to operate where numbers warrant..." which is the sum and substance of Senator Doody's amendment?

• (1430)

Senator Whelan: As I said earlier to the honourable senator, Mr. Sullivan's acceptance is good enough for me.

Senator Kinsella: If there are no other questions, honourable senators, I wish to say a few words in support of Senator Cogger's subamendment to the Term 17 resolution and, in so doing, quote for honourable senators what Premier Tobin stated in the House of Commons 16 years ago. It was on November 20, 1980, while Brian Tobin was a member of Parliament and, as such, a member of the special joint committee of the Senate and House of Commons that was examining the Constitution. Quite by chance on that same day, I happened to be appearing as a witness before that joint committee. At that time, Brian Tobin said:

...ideally, we are going to go to the ultimate in enshrining protections in stone. It should be or could be necessary, or would be desirable for the constitutional act of 1980 to also not only protect the denominational, educational system from any possibility of change as a result of federal initiative, but to protect the denominational, educational system also from any possible changes as a result of provincial legislature initiatives.

On that same evening, 16 years ago, while talking of Newfoundland's educational system, Brian Tobin also said:

...it could also...be technically argued, hypothetically be argued that the denominational, educational system, not that it ever would be, but could technically be changed by the Legislature of Newfoundland itself.

How things have changed!

Senator Stanbury, in debate on the main motion and on Senator Doody's amendment, drew our attention to the proposed

paragraph (a) of Term 17, and he questioned me as well. I committed to him that I would undertake to reread that proposed provision in light of his questions, which I have done.

Frankly, honourable senators, it is very important that we read what proposed paragraph (a) says. That paragraph begins with the words:

except as provided in paragraph (b)...

and of course proposed paragraph (b) speaks to the rights with which Senator Doody's amendment deals. The critical issue there is that proposed paragraph (a) is all subject to provincial legislation. That is the problem. Quite frankly, it is a problem that is cleared up by Senator Doody's amendment.

Honourable senators, there is another element upon which we have not focused in our debate thus far. I will underscore it because it involves that same proposed paragraph (a) that Senator Stanbury was concerned about. Yes, paragraph (a) provides for denominational schools, and those schools shall continue to have the right to provide for religious education.

However, honourable senators, that is the nub of the issue for the three classes of persons currently holding denominational school rights protected by the Constitution, which they do not wish to give up. They do not see their schools and their philosophy of education as being one through which they simply provide for religious education. Unlike other schools, where religion may be a subject-matter, within the three denominations that are opposing this proposed amendment to the Constitution, they do not see religious education as sitting over here as part of the curriculum with a cross, or the Vatican flag, sitting on top of it. For them, the whole school and educational enterprise is part and parcel of their faith community. Each of the classes of persons that we are speaking about here — that is, the Roman Catholic class of persons, the Pentecostal class of persons and the Seventh-day Adventist class of persons — view denominational education not as something that is part of the curriculum that they plug into for half an hour a day, or whatever. Rather, they view it as part of a whole philosophy of life, a whole way of living. Education is part and parcel of the expression of that way of living.

To help a bit on that point, in a publication a few days ago in the *The Catholic Register*, Father Daniel Donovan, who speaks about Catholic education from the standpoint of that particular faith community, writes:

If I had to choose a single word to suggest what a Catholic philosophy of education is, I would opt for "holistic." Such a philosophy views students as integral human beings, persons with moral and spiritual as well as intellectual capacities. Education obviously has to do with knowledge and imagination, with the fostering of linguistic and mathematical skills; it also has to do with relating to and working with others, with conversation and collaboration...

Fundamentally, many of these faith communities feel that they have struggled, in many cases for centuries, to be able to raise their children within the world view that is inspired by their faith tradition. Whether mathematics, gymnastics, or any of the other subjects that are commonly understood as being part of the curriculum, the exercises and the development of intellectual analysis and inquiry are transcendently reflected through their particular revelation and their particular faith and tradition — that is, where there is an interplay for them between faith on the one hand and knowledge on the other. There is an inspiration of knowledge through what they believe. They also feel that what they believe is inspired by what they know.

Obviously, in the secular system, that is not the philosophy. However, it is the philosophy of education for those communities in Newfoundland and it is why this is such an important minority rights issue for each of those communities. If they were *laissez faire*, or did not care, then we would be dealing with a different matter. However, this is something for which they feel they have struggled, and something that they feel was part of the constitutional compact that led to their very entry into Confederation.

The reading of proposed paragraph (a) speaks to their existence, under the new regime of denominational schools, where religious education may be continued. However, that is not what they are talking about; that is not what their struggle has been about, over the centuries.

Honourable senators, I wanted to take a few more moments to underscore the fact that our friend Senator Whelan has made reference to his view of what this chamber is all about. It is a learning experience for me to listen to what he has to say, and I will reflect on it, but my view is that the Senate, within our system of governance, is a place where the doctrine that “might makes right” will fall among stones. The fertile soil for our deliberations in this chamber speaks to the principles of fairness and equity. Yes, this chamber is the place where reason and compromise are shaped with the eye of experience.

The Senate is focused on the history of Canada. The story of our history is the story of great compacts and treaties that have been reached, whether between the English and the French, the Catholics and the Protestants, or region and region. Many of these compacts find expression in the British North America Act, the Constitution Act, 1982, the Charter of Rights and Freedoms or, in this instance, the Terms of Union between Newfoundland and Canada. It is not perfect symmetry. Canada is not the story of perfect symmetry. Great historical covenants were reached to make the country the success it has been. We in this chamber have participated in the elaboration of some of these covenants, which have secured rights for the great Canadian people. The great achievement of the constitutional recognition of the two linguistic communities in my own province of New Brunswick comes to mind. Certainly, the Acadian minority could not have achieved that result without the leadership in the majority community, and in this chamber.

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

[Translation]

TRANSPORT AND COMMUNICATION

TRANSPORTATION SAFETY AND SECURITY—
NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET
DURING SITTINGS OF THE SENATE

Leave having been given to revert to Notices of Motions:

Hon. Lise Bacon: Honourable senators, I give notice that on Thursday next, November 7, 1996, I will move:

That the Standing Senate Committee on Transport and Communications have power to sit at 3:30 p.m. on Tuesday, November 26, 1996 with respect to its study of the state of transportation safety and security in Canada, even though the Senate may then be sitting and that rule 95(4) be suspended in relation thereto.

BROADCASTING ACT

BILL TO AMEND—DEBATE CONTINUED

On the Order:

Resuming the debate on the motion of the Honourable Senator Whelan, P.C., seconded by the Honourable Senator Losier-Cool, for the second reading of Bill C-216, to amend the Broadcasting Act (broadcasting policy).—(*Honourable Senator Bolduc*).

Hon. Eymard G. Corbin: Honourable senators, would Senator Bolduc agree to yield the floor, provided the motion again stands in his name at a subsequent sitting?

The Hon. the Speaker: Honourable senators, it is understood that Senator Corbin will speak and that the motion will continue to stand in the name of Senator Bolduc.

Some Hon. Senators: Agreed.

Senator Corbin: Honourable senators, I will be brief. When I have something to say, I say it succinctly, without flourishes or embellishments, without beating around the bush.

I believe that Bill C-216 is a bad bill. Before going any further, I would like to thank Senator MacDonald for the comments he made last week and for his interest in the matter. I think he made an excellent speech. He made some comments that warmed the cockles of some of the hearts here in this house. My heartfelt thanks and congratulations.

The text of a letter faxed to the Honourable Sheila Copps by the Consumers' Association of Canada leads me to make a few comments on Bill C-216. We received a copy of this letter, thanks to the mover of the bill, Mr. Roger Gallaway, the member of the House of Commons for Sarnia—Lambton. The letter is in English. I am told the original copy is on its way. I did not have a chance to read the original copy. I would have liked to. However, I think we can assume that this copy is genuine and has not been modified in any way.

The letter was signed by Gail Lacombe, CAC national president and CAC Quebec representative and by Michael Janagan, Executive Director, Public Interest Advocacy Centre of the QCAC. Copies of the letter were sent to Roger Gallaway and the Honourable Eugene Whelan.

I find one paragraph rather disturbing. I would like to quote it, but I do not think the preceding paragraph or the one that follows have to be quoted as well. The third paragraph seems complete in itself. I quote:

[English]

It is beyond argument that Canadian consumers have the right to decide what goods and services they will purchase. This is the real issue which is being obscured by emotional, misleading references to "culture" and "French language rights."

Senator MacDonald: Offensive.

Senator Corbin: Precisely, Senator MacDonald. This is what urged me to stand up in this house today to say that I feel offended and wounded by such comments. I thought we had gone beyond that type of remark in this country. I did not expect this from an association which generally commands the respect of not only Canadian consumers across the country but also a great deal of respect from governments, which look upon the Consumers' Association of Canada as having some degree of credibility. It is the type of association which governments not only ought to listen to, but want to listen to from time to time to get the mood of the country on various issues, be it national unity or anything else.

Frankly, that comment is beyond what I can personally stand. I find it hard to accept that, after 28 years in Parliament, we are still confronted with that sort of cheap comment. There is no other word for it. It is because of comments like this that I think we ought to send the bill to committee for examination. The committee should call before it the Consumers' Association of Canada and the spokespersons for the French-speaking Canadians who are concerned about the effects of this bill if it is adopted in its present form.

If the Senate decides to send the bill to a committee, I believe that the committee ought to call as well the CRTC and the cable distributors.

The CAC says at the end of the fourth paragraph:

We are very concerned about suggestions that both industry and the government are being less than candid with consumers.

I think we should call all the players involved in this case before the committee. The Senate should take the time required to examine the issue objectively and in depth. I do not think it is our duty to expedite the passage of legislation of this type. To do so would be, in my opinion, irresponsible.

[Translation]

We would be remiss in our obligation to address any matter that might interfere with the rights of a linguistic minority, English in Quebec or French elsewhere in Canada.

Honourable senators, if we do not respect this information, which I feel has been accepted for a good quarter century now, there are other rights and privileges in the country that could fall by the wayside. We must have the courage to stand up in defence of what Conservative and Liberal governments have put forward this past quarter century. Lord knows, there are still forces working within this country to undermine, to destroy, these acquired rights.

I may have taken more than my three minutes, but I am one of those who would like to see this bill go to committee. The committee will need to take all the time required to examine what all interested parties have to say. We will then make a decision on the future of the bill, whether to amend it, let it die on the Order Paper, or pass it.

Hon. Roch Bolduc: Honourable senators, I have a few words to say about the principle of the bill, namely whether or not cable companies should give people access to and bill them for extra channels unless people let them know they do not want these extra channels. I cannot agree with this. The basic principle is that consumers must be free to choose, to pay only for what they want. Consumers pay every time they want something. When they go to the supermarket, if they want bananas and oranges, they buy bananas and oranges. If they do not want tomatoes, they do not buy any. There is no use offering package deals with tomatoes if consumers do not want them. That is more or less what is happening.

This kind of thing was done in the past. It was a way of attracting customers, of forcing their hands, as the companies thought that people would not respond, that they would grumble, but that they would pay up in the end.

With respect to the principle of this bill, I would like to outline my own philosophy. It is a good old Liberal philosophy in the traditional sense, not that of the interventionists across the way. In my opinion, consumers should be free to choose.

In fact, a nasty journalist from Toronto called me yesterday to ask me if I was in favour of consumers' freedom. I said, "Certainly." He then asked me if I would support the bill. I said, "Wait a minute, there is another aspect to consider." If this means that, in some parts of Canada, in Quebec or in other provinces, technology and operating costs are such that, if there is no package, people will be deprived of essential services, especially in the area of information, if, in this particular case, some Canadians were adversely affected, I would be reluctant to vote in favour of this bill at second reading.

I support the economic principle behind this, but if this bill would have an adverse impact — a perverse effect, as they say in economics — I will not support it. I am not familiar with parliamentary procedures. Could we not review this impact in committee, before voting on the principle of the bill at second reading? This principle has a hidden face, so we are not sure what we are dealing with.

Like Senator Corbin, I would like to hear witnesses, to get various opinions on this issue. Then, we would be in a position to make a decision. The journalist to whom I am referring said to me: "You heard people from Montreal and that was it." This is how he solved his problem.

This reminds us of General Motors, which, after the war, supported the principle of competition, when it was producing 70 per cent of all automobiles in America. It was easy to support competition. I am all in favour of competition, but I am also for the little guy.

These are my reservations. I will not go any further today. I am not prepared to do so, but at least I gave you some basic reasons why I am not sure about supporting this principle. Were it not for these reservations, I would support the principle. However, in the real, concrete world, I do not know.

Hon. Lowell Murray: Honourable senators, I want to reassure my colleague and to tell him that there are precedents of bills referred to a committee before second reading. This is done with the unanimous consent of the house.

Senator Bolduc: I am not making this a formal motion. I am not familiar enough with the rules of procedure. Perhaps Senator Stewart could help us in this regard.

[English]

• (1450)

Hon. Finlay MacDonald: Honourable senators, you may recall that, when I spoke last Thursday on this item —

The Hon. the Speaker: Honourable Senator MacDonald, indeed you have already spoken on this motion. Is it a question that you are raising?

Senator MacDonald: Honourable senators, I would like to ask a question, if permitted.

Given Senator Corbin's experience, should this bill be approved in principle or should it not be read the second time and go directly to a committee?

Senator Gauthier wished to speak on this order, and that is the only reason I did not bring forward the motion. Would the Honourable Senator Corbin like to comment?

Senator Corbin: Honourable senators, I thank Senator MacDonald for his question. The adoption in principle of a bill at second reading is a disputed matter in itself. I believe Senator Stewart has researched and commented in the past on the matter of adoption in principle at second reading. I look forward to his comments and advice in this regard.

To respond directly to the inquiry by Senator MacDonald regarding Senator Gauthier, I also received a letter from Senator Gauthier dated October 23, the same letter from which the Honourable Senator MacDonald quoted last week. I understand that, even though our colleague has been seriously ill in recent weeks, he would like to come back to the Senate and make some comments at this stage of the bill. Therefore, I suggest that we wait a while longer to allow our colleague to make his comments. He has researched the matter in great depth. I personally want the benefit of hearing his views on the bill.

Coming back to the question of adopting in principle a bill at second reading, a precedent was established in the Senate in recent years. When the party of the honourable senator was in power, we had before us a bill to incorporate the Opus Dei as a corporation sole. We unanimously agreed to send the subject-matter to committee. I do not recall any other instance.

Senator Oliver: Bill C-62 is another example. It dealt with telecommunications.

Senator Corbin: I think the honourable senator is right. We usually do that by unanimous consent.

Having said that, we should wait for Senator Gauthier to come back and make his speech. In so saying, I wish him the best on behalf of all honourable senators. He is undergoing a very difficult time indeed.

Hon. Senators: Hear, hear!

The Hon. the Speaker: Honourable senators, we are slightly out of order. Questions should be asked of the last speaker and not of a previous speaker in the debate. The last speaker was Senator Murray. However, I have allowed it, provided it is not viewed as a precedent.

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, I believe we have all received the letter referred to by Senators MacDonald and Corbin and others. Senator Gauthier has spoken to me personally and asked that, at the appropriate time, this order be adjourned in his name so that he might have an opportunity to speak at this stage of the debate.

I also endorse the comment of Senator Corbin, that all honourable senators would wish to extend to Senator Gauthier our very best wishes at this very difficult time.

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

• (1500)

CRIMINAL CODE OF CANADA

SECTION 43—INQUIRY—DEBATE CONTINUED

On the Order:

Resuming the debate on the inquiry of the Honourable Senator Carstairs, calling the attention of the Senate to section 43 of the Criminal Code of Canada.—(*Honourable Senator Cools*).

Hon. Erminie J. Cohen: Honourable senators, Senator Cools has yielded to me and so it is that I rise today to speak on an issue that causes me deep concern and that was brought to the attention of this chamber by our colleague the Honourable Senator Sharon Carstairs. The issue is section 43 of the Criminal Code, which states:

Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

Since Senator Carstairs spoke on this subject last June, I have spent time studying the impact of section 43 and am now convinced more than ever of the need for its immediate repeal.

Honourable senators, the continued existence of section 43 of the Criminal Code caught the public's attention as a result of a widely publicized case tried in court last year. Even before, it had been an object of attention and study by many who are deeply concerned about the welfare of Canadian children.

Submissions calling for repeal of section 43 have already been presented to the federal government by such groups as the Canadian Coalition for the Rights of Children, the Institute for the Prevention of Child Abuse, and the Canadian Foundation for Children, Youth and the Law. The legitimacy of section 43 has also been the subject of numerous reports of parliamentary

committees and government departments over the past 20 years, including a 1981 House of Commons committee that recommended its immediate repeal.

Still, last year's court case serves as a good starting point for my discussion today. Allow me to review the facts briefly. An American father, while holidaying in Ontario, was charged with assault. Witnesses testified that he had struck his five-year-old daughter four times, then thrown her face-down over the trunk of his car, pulled down her underpants and spanked her eight times. Last spring he was acquitted by a court of law under section 43 of our Criminal Code. With his acquittal, his actions simply added to the long list of precedents that may be used in future section 43 defences — precedents, honourable senators, that serve to establish just what kind of force is supposedly "reasonable under the circumstances."

So far the list includes hitting with straps, extension cords, rulers, and sticks; it includes kicking, hitting, slapping, and hair pulling; and it includes beatings that cause nosebleeds, chipped teeth, bruises, abrasions, welts, and even brain damage. Those are the kinds of assaults upon our children, carried out by some of their parents and teachers, that the Criminal Code, thanks to section 43, continues to condone.

Honourable senators, imagine we are witnessing a situation similar to the case I just mentioned, only this time the defendant has pulled down not his small daughter's pants but those of his wife, thrown his wife across the trunk of his car and spanked her. Or imagine that the victim is another adult, a co-worker, perhaps a neighbour or parking lot attendant. We would be horrified and appalled indeed. There would be no doubt whatsoever in any of our minds that it was not right. There would be no doubt that what we were witnessing was in fact an assault, and I am sure we would be falling all over ourselves in a rush to summon the police.

I ask you, honourable senators: Why are so many of us not just as horrified and appalled when the victim of such an assault is a child and the assailant happens to be the child's parent? Why are children in our society not entitled to the same protection from physical harm as adults? After all, children are people, too. They most certainly do not deserve to be treated like second-class citizens.

The point I wish to make today is that we should be just as concerned, and Canada's children should be entitled to the same physical protection as adults. We can take a giant step toward that goal by immediately removing section 43 from the Criminal Code.

Honourable senators, how a society treats its most vulnerable members is a key measure of its maturity, and as our society has matured, Canadians have increasingly come to reject the use of force and violence in our relationships with one another. However, this was not always so. Spousal abuse used to be tolerated, if not accepted. For example, men who raped their wives could not even be charged with a crime, let alone

convicted of one. Likewise, corporal punishment used to be a fact of life throughout our schools and in our prison system. Today, we can look back with pride on our progress in those areas. Why, then, do we still allow state-sanctioned assault by parents and teachers upon our children, who are society's most precious resource and who are also Canada's smallest and most vulnerable citizens?

Honourable senators, how can it possibly be considered right that the bodies of prisoners — convicted criminals! — have more legal protection against force and violence than those of our innocent children? How can we justify the continued existence of section 43 when it flies in the face of the Canadian Charter of Rights and Freedoms. As you may recall, section 15(1) states:

Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

What about section 7 of the Charter, which guarantees everyone the right to security of the person? What about section 12, which guarantees everyone the right not to be subjected to cruel and unusual punishment or treatment?

Honourable senators, section 43 clearly violates the Charter rights and, indeed, the human rights of Canadian children. It makes a mockery of all that Canadian society claims to stand for: freedom, fairness, equality, and non-discrimination. It also holds Canada up to international ridicule, giving the lie to our stated support for the United Nations Convention on the Rights of the Child.

My opposition goes well beyond matters of principle. It is based in my deep concern for the safety and well-being of Canadian children, both collectively and as individuals, for I believe that section 43 represents a real threat to their physical safety and it threatens it in several ways. First and foremost, section 43 condones the use of force and violence against children by their parents and teachers. It thus creates in parents the mindset that violence is an acceptable means of correcting and disciplining their children. However, violence, even when considered reasonable by the courts, is still violence. The acceptance of such violence has the potential to lead to more serious abuse. It is only a matter of degree. Indeed, as an April, 1994 report by the Repeal 43 Committee pointed out:

The belief that it is necessary and right to use physical punishment to correct or discipline a child is one of the main causes of physical abuse of children....

A significant portion of research—

That is, research into child abuse.

—indicates that an important factor in physical abuse is the belief by parents that they have the right to use force against their children. It is this belief in the use of force that is the root of the problem.

Meanwhile, University of Manitoba Professor Joan Durant, quoted in *The Ottawa Citizen* of December 4, 1995, said studies have shown that use of physical force can escalate to abuse. She pointed out that spanking or use of other physical force greatly increases the risk of abuse and that most abuse cases studied have resulted from disciplining that got out of control.

In addition to the physical and psychological harm that corporal punishment can cause to its child victims in the first instance, it can also create a cycle of violence as those children grow up. According to Karen McCarthy of the Ottawa-Carleton Children's Aid Society:

Spanking is sending the message that violence or hitting is a way to solve problems. This makes eminent sense when you consider that the people authorized by section 43 to use force against children — parents and teachers — are the two most important role models in most children's lives.

This observation was also summed up nicely in *The Toronto Star* editorial from May 1, 1995, which stated:

Parents mistakenly think that when they hit their children they are only teaching them one lesson — that they misbehaved. In fact, they are sending a second message as well: that when you disapprove of somebody else's behaviour, you may hit them. If this message sticks, these children may go on to be violent adults.

Nanci Burns, family violence expert and founder of the Repeal 43 Committee, pointed out that corporal punishment only teaches children to be fearful of the parent. Professor Durrant points out that many studies have shown that children who are hit will stop their misbehaviour only for the moment. Furthermore, she said:

Corporal punishment increases deviant behaviour, it increases non-compliance over time.

In fact, no empirical studies have found that corrective force produces any positive results whatsoever!

Honourable senators, the repeal of section 43 is an issue that has brought together people from a wide variety of backgrounds. It is also an issue that cuts across political affiliation. It has the support of our colleague Senator Carstairs from the Liberal benches. It has the support of a Member of Parliament for the New Democratic Party, Svend Robinson, who last year introduced a private member's bill to repeal this section. It most certainly has the support of this senator from the Progressive Conservative side of this chamber.

Unfortunately, however, the repeal of section 43 does not yet have the support of the federal government, which has said that it has no intention of repealing it. *The Vancouver Sun* of April 27, 1995, quoted Justice Minister Allan Rock as saying:

Trying to draw a line between spanking and beating is asking too much.

Honourable senators, with respect, I beg to differ!

Perhaps the government is concerned that removing section 43 would remove the authority of parents to discipline their children. Perhaps it is not aware that there are other, more humane methods of doing so. In what rule book is it written that discipline equals force and violence?

Corporal punishment has been banned in Sweden since 1979, in Finland since 1983, in Denmark since 1985, in Norway since 1986, and in Austria since 1989. Parents in those countries are still disciplining their children, honourable senators, but more and more are now doing so without resorting to force and violence. Senator Carstairs has already drawn your attention to the positive results observed in Sweden.

Honourable senators, I have shared with you some compelling arguments in support of the repeal of section 43 of the Criminal Code. Now I urge you to join with me in calling for the immediate repeal of this section. By combining our efforts with those of others who care about Canadian children, we can convince the government to take this necessary action. Perhaps, one day, hitting our children will be no more acceptable to Canadian society than hitting our spouses or co-workers.

I leave you now with a quote from an editorial that ran in *The Edmonton Journal* on May 6, 1995:

It is not difficult to imagine a day when even a spanking is regarded, if not as unacceptable violence, at least as an unacceptable failure in parenting. In such circumstances, with guidance replacing force, a child might develop self-discipline as a matter of human dignity rather than in fear of external punishment. It would be a better world for parents and children.

Hon. John G. Bryden: Honourable senators, I wonder if the honourable senator would entertain a question.

Senator Cohen: Yes, certainly.

Senator Bryden: I concur with everything said by the honourable senator. Without having the Criminal Code in front of me, would the repeal of section 43 take away the perceived right of a parent to use physical discipline?

As I heard the honourable senator, she did not seem to say a parent and a person *in loco parentis*, but anyone *in loco parentis*. Does the section also include the parent?

Senator Cohen: I do not think it takes that right away.

I did not hear the whole question. I am sorry.

Senator Bryden: Would the honourable senator read that section again?

Senator Cohen: Yes, I will.

The issue is section 43 of the Criminal Code, and it states:

Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or a child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

Senator Bryden: It does include the parent. It is not just somebody standing in stead of the parent.

Senator Cohen: Sorry. I did not hear the previous question.

Senator Bryden: I should have read the bill also.

The Hon. the Speaker: Honourable senators, this item on the Order Paper will remain standing in the name of the Honourable Senator Cools.

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

COMMEMORATION OF FIFTIETH ANNIVERSARY OF END OF WORLD WAR II

INQUIRY

Hon. J. Michael Forrestall rose pursuant to notice of October 31, 1996:

That he will call the attention of the Senate, as we approach Remembrance Day, to the work that was done and the significance of the pilgrimage, both to Europe and the Far East, to commemorate the 50th anniversary of World War II.

He said: Honourable senators, as you will be aware, last year marked the 50th anniversary of the end of World War II. It was a significant time in our history to look back at the courage and sacrifice of those who fought in the three major wars in this century, particularly those who participated in World War II. I might include in that the Battle of the Atlantic and of course the great battles in Europe and the Far East.

This year, 1996, is important because we must take time to remember, to show our unfailing support for Canada's military, just as in years gone by brave men and women of our Canadian Armed Forces showed their support for us. Given the cloud of destructive criticism swirling around our military today, it is important to remind Canadians that honour, integrity, dedication and service are still the watchwords of the men and women who make up our present forces. There are those who just a few years ago argued that with the end of the Cold War, the fall of the Berlin Wall and the break-up of the Soviet Empire, Canada would no longer need a military force. Of course, subsequent events have shown that the end of the Cold War led only to the rise of small but very deadly fratricidal and territorial wars. These conflicts involved Canadian troops as warriors in the Gulf, as peacemakers and peacekeepers all over the face of that part of the earth.

These men and women served the Canadian people with courage and dignity, and I am not prepared to let the actions of a few cloud in any way my vision of the work of our military both in the past and as we continue to move toward a very uncertain future.

• (1520)

All that having been said, honourable senators, I think it is particularly important to recall the events of the last year commemorating the end of World War II. I was fortunate to be able to participate in what has been termed the "pilgrimages" to areas in Europe and in the Far East where Canadians fought with great courage and, in many cases, gave up their lives for the cause of freedom.

In 1993, the federal government initiated a program called Canada Remembers to provide a special commemorative tribute to the thousands of Canadian women who served in our military with honour, integrity and bravery in major battles in foreign lands, and for those who served here on the home front with equal selfless dedication. Because of this program of events, a special tribute to those who made the supreme sacrifice, a heightened awareness of the triumphs and tribulations of war was created among Canadians, both young and old, which we have not seen for some considerable time.

Across the country, school children made posters and videos and wrote poems and stories telling of the bravery and passion of those who gave their lives because they believed they had a responsibility to make the world a safe place. In cities, towns and small villages, shopkeepers did their part by decorating storefronts with commemorative information on individual acts of valour, paying tribute to those who fell and to those who came home to share the victory and triumph of democracy.

Clergy of all faiths paid homage in sermons and homilies, plays were written and performed, vignettes appeared on television, and live events were presented on stage and in community concerts. In 1996, it is important to recall these pilgrimages. They brought Canadians face to face with a proud Canadian military tradition.

I cannot spend time in the company of veterans and reflect on the medals they proudly display — occasionally along with physical marks of encounters, to which individuals like myself can only relate with a feeling of awe — without coming to understand, with feelings of deep respect and admiration, that the democracy in which I live has been paid for by them and by others with whom I also had the privilege to spend some time as we stood quietly in the graveyards across the face of Europe and the Far East.

The locales of the Italian campaign, the D-Day battlefield, the sites of the liberation of Belgium, the battle of the Scheldt and the various locations that commemorate the liberation of the Netherlands were visited by those on the European pilgrimages. Lest I forget, the City of Liverpool was the location of a most moving commemorative ceremony marking the anniversary of

the Battle of the Atlantic. Senator Perrault attended that ceremony with me.

In addition, during 1995 a special pilgrimage was made to the Far East to commemorate the end of the war in the Pacific and the liberation of Canadian prisoners in Hong Kong. In each of these pilgrimages, Canadian veterans who served in the particular theatre of war were the essential members of the groups, which also included politicians, media and, more important, representatives of Canadian youth. The largest delegation was the 183 people who travelled to the Netherlands, and the smallest included some 69 who went to Belgium.

In each of these pilgrimages, major commemorative ceremonies were held, including visits to the location and the laying of wreaths at specific memorial sites. Parades were staged in communities where the brave acts of Canadians in their earlier days had brought an end to war and allowed freedom of person and spirit to return undiminished. Receptions were staged by municipalities in appreciation of the Canadian contribution and the sacrifice that brought back peace and security to their citizenry.

I can tell honourable senators from personal observation that the impact of these receptions on our veterans was both emotional and extremely satisfying, because they, too, remember those early days when they placed their lives on the line because it was the right thing to do. In fact, it was the only thing to do. It was at moments like these that I felt such an overwhelming pride in all that had been accomplished by the veterans who were there to share this joy, and an equally overwhelming sadness at the lives that had been sacrificed to make it so.

Honourable senators, I should like to take a few minutes now to reflect on each of these pilgrimages, its purpose and the events that made it so memorable.

The pilgrimage to Italy commemorated the vital role of Canadian troops in the 20-month Mediterranean campaign that led to the liberation of Italy during the Second World War. This campaign marked the first major large-scale land operation in which the Canadian army stationed in Great Britain took part.

Battles were fought in Sicily from July 10 to August 6, 1943, and on mainland Italy from September 3 of that year to February 25, 1945. There were 25,264 Canadian casualties in the fighting, including more than 5,900 who were killed.

Our identified war dead in Italy are buried mainly, although not entirely, in 17 Commonwealth war cemeteries or commemorated on the memorial at Cassino. Visits to the graves of the fallen Canadians brought the purpose of the pilgrimage sharply into focus for all who participated.

It is important that we note here the known locations of our war dead. The only Second World War cemetery that is exclusively Canadian is the Agira Canadian War Cemetery in the heart of Sicily, 71 kilometres from Catania, where 490 Canadians are buried. In Bari War Cemetery on Italy's Adriatic Coast are 2,245 Commonwealth headstones, of which 210 are Canadians.

In Moro River Canadian War Cemetery, about five kilometres before the Moro River battle site, two Canadian fliers are buried along with 2,600 airmen of the RAF. Most of the Canadians who fell in the Liri Valley are buried in two cemeteries in the area south of Rome: Caserta War Cemetery, where 98 Canadian soldiers and one Canadian airman are buried; and Cassino War Cemetery, farther north and just off the road to Rome.

The latter is the second largest World War II cemetery in Italy. Among the over 4,200 headstones located here are those of 855 Canadians, including relatives of mine, who died during the battles of the Hitler line and the advance towards Rome. Also found in this cemetery is the Cassino Memorial, which lists the names of 4,054 men who died in the Sicilian and Italian campaigns and had no known grave. It includes the names of 192 Canadians.

At the Beach Head War Cemetery in Anzio on Italy's west coast, 68 Canadians lie among the 2,313 dead. Rome War Cemetery has 22 Canadian graves — those of administrative staff and prisoners who died in captivity in that area. In the Florence War Cemetery, east of the city on the north bank of the Arno, the graves of 50 Canadians can be found among those of 1,637 Commonwealth soldiers who died in action before the city was captured.

• (1530)

Two cemeteries near the Adriatic Sea were begun during the fighting to breach the Gothic Line: Ancona War Cemetery, where over 1,000 Commonwealth soldiers and airmen are buried, including 161 Canadians, and Montecchio War Cemetery, further north and 13 kilometres inland from Pesaro, where 289 graves, of a total of 582, belong to Canadians. In Gradara War Cemetery, the 1,192 Commonwealth headstones, including those of 369 Canadians, are mute testimony of the Allied sacrifice in the advance from Ancona to Rimini.

Coriano Ridge War Cemetery also contains 1,940 graves of those killed on the advance to Rimini, including 427 Canadian graves. A total of 937 Commonwealth soldiers who died in the winter of 1944-45 are buried in Ravenna War Cemetery, including 438 Canadians. A half-hour drive from Ravenna is the Cesena War Cemetery where 307 Canadian graves can be found among the 775 graves dating from November 1944.

In Villanova Canadian War Cemetery, 206 of the 212 graves belong to Canadians. This cemetery has been described as a memorial to the fallen of the 5th Division, as 85 members of two battalions of this division are buried here.

The D-Day pilgrimage, perhaps the largest, was particularly meaningful because of the significance of that landing in the history of Canada. As Jack Granatstein, one of Canada's great military historians, wrote:

Over a brutal ten-week period in the stifling heat of that terrible summer, the inexperienced soldiers of the First Canadian Army fought against a powerful enemy, suffering and inflicting heavy casualties. By the third week in August, when the campaign in Normandy at last came to its end, the armies of the Nazi regime had suffered a resounding defeat, one in which Canadian regiments played a major role. In the process, Canada's troops had been forged into a highly effective army.

Canadians played a monumental role in breaking the backbone of the German army in Normandy. However, this was done at a price. There were 18,444 Canadian casualties, of whom 5,021 were killed. Of all the divisions which formed part of Montgomery's 21 Army Group, none suffered more casualties than the 3rd and 2nd Canadian divisions.

The accomplishments of the Canadians who landed in Normandy and of the Canadians who fought through Burn and Authie, Verrières Ridge and the Falaise Gap were commemorated by ceremonies held during that pilgrimage.

Those involved in the pilgrimage to Belgium remembered the more than 800 Canadian soldiers buried there. They died in the autumn of 1944 for the liberation of Flanders, including the cities of Furnes, La Panne, Nieuport, Ostend, Knocke-Heist, Bruges, Eecloo and the northern suburbs of Antwerp. Their sacrifice still brings back memories of suffering in the hearts of many Canadians.

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

Senator Forrestall: May I beg the indulgence of honourable senators to continue?

The Hon. the Speaker: Is leave granted for the honourable senator to continue?

Hon. Senators: Agreed.

Senator Forrestall: We remembered, as well, the 7,000 Canadians buried in Holland, some of whom fell in the bitter fighting needed to free the Scheldt estuary, an operation which allowed the opening of the port of Antwerp. It is not perhaps inappropriate in this context to recall the memory of the 15,000 Canadian soldiers who died for the liberation of Belgium in World War I.

While commemorative services were held in many locations during the pilgrimage to Belgium, it is important that we remember where our brave soldiers lie in foreign soil. There are 848 in Adegam Canadian War Cemetery, 74 in the Brussels Town Cemetery, 157 in the Heverlee War Cemetery at Louvain, 88 in the Holton War Cemetery and 348 in the Schoonselhof Cemetery in Antwerp.

I personally took part in the pilgrimage to commemorate the battle of the Scheldt. Our group consisted of 61 veterans and four youths from across Canada. The battle of the Scheldt was one of the pivotal battles of the Second World War following the initial landings on the beaches of Normandy. This campaign lasted for five weeks during the months of October and November, 1944. The mission of the First Canadian Army was to clear out the enemy on either side and at the mouth of the Scheldt river, running through Belgium and the Netherlands. Only by taking this waterway could our troops get to the port of Antwerp and open up the supply route. Success came on November 28, 1944, but not without a heavy price.

As the veterans and the rest of the delegation travelled through the final resting places for many of their comrades in Belgium and the Netherlands, we remembered the more than 6,000 Canadians killed, wounded or taken prisoner during that battle.

One cannot stand, as I did, at the Adegan Canadian War Cemetery, where 848 Canadians lie buried, without realizing that we as a delegation were brought face to face with the tragedy and reality of war. We felt the cost of peace as we walked among the graves.

The final pilgrimage to Europe celebrated the 50th anniversary of the liberation of the Netherlands. Canadians have developed a special warm and loving relationship with the people of the Netherlands. The foundations of a special relationship between our countries were established during those dark years of the Second World War. When Holland was overrun by the Nazis in May 1940, Queen Wilhelmina sought refuge in England and, from there, headed her country's government-in-exile. England was not a very safe haven either and in 1942 Crown Princess Juliana was persuaded to leave for Canada where she made her wartime home. Here, on January 19, 1943, in a room in Ottawa's Civic Hospital specially decreed to be Dutch territory, her third daughter, Margriet, was born. That tiny princess captured the hearts of Canadians who claimed her as their own.

When victory was secured in 1945, Princess Juliana and her family returned to their homeland where they found the people recovering from the ravages of war. They also discovered a tumultuously happy Dutch population deeply grateful to the Canadians who had recently liberated them. That happiness remains, I am proud to say. Sincere and profound ties of friendship and respect between Canada and the Netherlands exist to this day. The evidence may be seen in the tulips which bloom in Ottawa each spring.

Even though the cost in lives was high, Canadians were proud to have been cast in the role of liberators, and the citizens of the Netherlands have not forgotten that. On the memorial in the Canadian War Cemetery at Groesbeek are inscribed the following words: "We live in the hearts of friends for whom we died."

Canada's 5,706 war dead in the Netherlands are buried mainly in seven Commonwealth war cemeteries and are commemorated

on the Groesbeek Memorial. Each war cemetery is marked by a large stone Cross of Sacrifice bearing on its shaft a crusader's sword of bronze. In the larger cemeteries there is also a Stone of Remembrance, an altar-like monument bearing the words: "Their Name Liveth For Evermore."

Bergen-op-Zoom Canadian War Cemetery is located in southwest Holland and contains the graves of 968 Canadians, the majority of whom fell in fighting to open the sea approaches to Antwerp and make them available to Allied shipping.

• (1540)

That war cemetery which I mentioned, Groesbeek, is situated close to the eastern Dutch city of Nijmegen. More than 2,300 Canadians are buried there. The memorial at the entrance to the cemetery contains the names of another 103 Canadians for whom there are no known graves.

Holten Canadian War Cemetery is just north of that city in northeast Holland. There are 1,355 Canadians buried there, nearly all of whom died during the last stages of the war in Holland and during the advance of the Canadian 2nd Corps into Germany.

The Reichswald Forest Cemetery and the Rheinberg War Cemetery are both located in Germany just east of the Dutch border. In the Reichswald Forest War Cemetery there are 706 RCAF headstones and one for a Canadian soldier. Not far from there lie the remains of other relatives of mine. The Rheinberg War Cemetery has 516 headstones for Canadian airmen.

The last of the pilgrimages, and the one that left me with the most haunting memories, was to commemorate the end of the war in the Far East and the liberation of prisoners of war in Hong Kong.

It was in the defence of Hong Kong in 1941 that Canadian soldiers were first committed to battle during the Second World War. The battalions chosen to represent Canada in Hong Kong were the Royal Rifles of Canada and the Winnipeg Grenadiers.

The fighting in Hong Kong extracted a tragic toll from Canada in dead and wounded — 290 killed and almost 500 wounded. However, the Canadian death toll did not end with the surrender, as Canadians were imprisoned under the foulest of conditions and had to survive brutal treatment and near starvation. Unfortunately, many did not survive. Some died in the camps in Hong Kong while others died in the forced labour camps in Japan. Nearly 300 of our men died in captivity.

A memorial has been erected at Sai Wan Bay War Cemetery on the island of Hong Kong to honour those who died in its defence. On this memorial, made of white granite, are inscribed the names of over 2,000 people, 228 of them Canadian, who died in Hong Kong and who have no known grave. Included is the name of Company Sergeant Major John Robert Osborn, Winnipeg Grenadiers, who was awarded the Victoria Cross posthumously.

Below the memorial, the Sai Wan Bay War Cemetery slopes down toward the sea, with a magnificent view of the coastline and the distant hills. Here are buried 283 soldiers of the Canadian Army, including 107 who were not identified.

Stanley Military Cemetery is situated just beyond the small fishing village of Stanley in the southern part of Hong Kong island, on the Tai Tam Peninsula. Twenty Canadians are buried here, including one unknown soldier.

Canadian involvement in Southeast Asia consisted primarily of participation by the RCAF. Here, the toll was heavy as well. There are 199 Canadian names inscribed on the Singapore Memorial to commemorate those who have no known grave, and three Canadians are buried in the Kranji War Cemetery in Singapore. In addition, 56 Canadian war dead are buried in Burma and one Canadian name is inscribed on the Rangoon Memorial.

Out of an estimated 8,000 Canadians who served in Southeast Asia, a total of 454 were either killed in action or died of disease. As I travelled from war cemetery to war cemetery in the Far East, and listened to the stories of the veterans in whose company I was privileged to find myself, the true meaning of our act of remembrance was brought home to me time and time again by an aging but unfaltering veteran:

They shall grow not old, as we that are left grow old:
Age shall not weary them, nor the years condemn.
At the going down of the sun and in the morning
We will remember them.

However, honourable senators, remembrance, if it is to be meaningful for all Canadians, must have a future as well as a past and a present. War shows humanity at its worst and at its best. Canadians must take time each year to recognize what occurred, what still occurs and what could occur in the future.

I want to close my remarks this afternoon by thanking the Minister of State for Veterans, the Honourable Lawrence MacAulay, and in particular the Deputy Minister, Mr. David Nicholson, and all of the people of the Canada Remembers secretariat for working so hard and so diligently to make the pilgrimages of last year such a success. All Canadians owe them a debt of gratitude.

The Hon. the Speaker: Honourable senators, if no other honourable senator wishes to speak, this inquiry shall be considered debated.

The Senate adjourned until tomorrow at 2 p.m.

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