



CANADA

# Debates of the Senate

---

2nd SESSION

•

35th PARLIAMENT

•

VOLUME 135

•

NUMBER 51

---

OFFICIAL REPORT  
(HANSARD)

Thursday, November 7, 1996

—

THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER

## CONTENTS

(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

Thursday, November 7, 1996

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

Prayers.

### SENATORS' STATEMENTS

#### REMEMBRANCE DAY

##### **Hon. Joyce Fairbairn (Leader of the Government):**

Honourable senators, we shall not be in session on Remembrance Day, when many of us will be attending ceremonies in our home provinces. I would, therefore, take this opportunity to honour the memory of those Canadians who so valiantly gave up their lives in the two world wars, the Korean War and other conflicts. I would also thank all of the men and women of our armed forces who represent our country as part of peacekeeping efforts in troubled areas around the world.

More than 1.5 million Canadians served in the two world wars, and 116,000 lost their lives. It is extremely important to Canadians of all ages that on Remembrance Day we keep their memory alive by honouring their courage, their dedication and their sacrifice to preserve our peace, freedom and democracy.

Remembrance Day, honourable senators, also provides an occasion for veterans to recount their stories. On that day, when Canadians attend memorial services across the country, we not only pay tribute to those who did not return from battle, but we also honour the veterans who did come back.

[*Translation*]

And with every passing year, it becomes increasingly important to keep their memories alive.

[*English*]

Honourable senators, with every passing year there are fewer veterans to join in the march; with every passing year there are fewer veterans to share firsthand their experiences and their memories of the sacrifices of their friends and comrades.

It is up to all of us to set an example for younger Canadians by ensuring that the history of these veterans continues to be told and recorded. As Canadians, we must preserve in our national memory the lessons learned from those generations who defended our future.

In keeping these memories alive, honourable senators, this week the government unveiled a multi-year project to erect a monument to aboriginal veterans to recognize the extraordinary contribution of aboriginal Canadians in the two world wars and the Korean War, as well as in Canada's peace operations. This will create a new landmark celebrating aboriginal veterans.

In conjunction with this announcement, an Aboriginal Veterans Scholarship Trust has been established to improve educational opportunities for young aboriginal Canadians.

Honourable senators, these aforementioned items were among the recommendations made by our Senate Veterans Affairs Subcommittee, under the leadership of former Senator Jack Marshall, which made such an outstanding study and report on this particular issue.

Finally, honourable senators, it is up to all of us to support with diligence the cause of peace wherever it is threatened in the world. To those who gave their lives for us, we will never forget. To those who returned, and are left with their thoughts of pride, courage and sadness, we offer our profound gratitude.

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

##### **Hon. John Lynch-Staunton (Leader of the Opposition):**

Honourable senators, it is something to remember each year at this time that the most honoured warrior in the history of this world is the Unknown Soldier. He lies near a gate to Westminster Abbey, in earth shovelled reverently from the Somme, from Passchendaele, from Ypres, from Vimy — the great battlefields of the war that was supposed to end all wars. There, kings and queens and emperors go to lay their wreaths and speak of sacrifice and honour, a place to say with Lawrence Binyon:

At the going down of the sun and in the morning,  
we will remember them.

In Canada, in this city, a great stone and iron monument stands as a national memorial to the too many Canadians who perished in that First Great War and the Second World War that followed it with indecent haste. Not far away, in the Peace Tower that dominates this city, rests the Book of Remembrance, with the roll call of the fallen. On Remembrance Day, trumpets sound, drums are beaten and aircraft roar in salute, a place to repeat with John McRae:

To you from failing hands we throw  
The torch; be yours to hold it high.

Failing hands? From the host who served Canada in the Second World War, over 460,000 survive. There are 19,000 left who fought in Korea. Of all the brave of 1914-1918, there are but 1,900 still among us.

It behoves us, honourable senators, to sustain such symbols and sounds of tragedies that were victories and the honours that are due, but here in Canada, that peaceable country for all of its honours in war, we are more likely to find our most touching remembrances in humbler places and spoken in plainer words — perhaps no anthem grander than another chorus of the Quarter Master's Stores, no recollection more eloquent than "I remember" spoken at the tavern or the Legion Hall.

Honourable senators, allow me to take a few moments to repeat one of the finest examples of "I remember" from the Second World War. It was included in a book by that remarkable diplomat, George Ignatieff, a book called, of all things, *The Making of a Peacemaker*. He accompanied Mackenzie King to Britain in 1941. He said:

The visit did not start off on a propitious note. As the high commissioner's private secretary, I had made arrangements for an honour guard to be at the Prestwick Airport and had promised the commanding officer that I would signal the approach of the prime minister so that his men could present arms. What I did not realize was that Mr. King would emerge not from a door but from the bomb-bay of the converted Liberator in which he had crossed the Atlantic. Not a rifle moved as the prime minister carefully lowered himself to the ground and retreated from the aircraft, presenting his backside to the honour guard.

Next to disembark was General Georges Vanier, at the time Mackenzie King's military adviser. He had lost a leg in World War I, and though he managed remarkably well with an artificial leg, he always carried a spare in case of trouble. 'Would you mind finding my spare leg?' he said to me as he left the plane. He was followed by Norman Robertson, the under-secretary of state for external affairs. When I asked Norman where I might find the general's leg, he replied that I was shouting into his deaf ear and he couldn't tell what I was saying. Jack Pickersgill, the prime minister's executive assistant and the fourth member of the official party, turned out to be deaf in the other ear and couldn't hear me either. It occurred to me that this strange delegation was not likely to add anything other than confusion to an already confused war effort.

Honourable senators, there were many confusions before that bloody war was over, but we must never pack up all our troubles in our old kit bags. We must never forget that the old and young

men who were warriors, and the young women who joined them in sharing the risks so eagerly taken, were like their country, our country: young, determined and full of hope. I believe that is how they want us to remember them.

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

#### BUDGET CUTS TO LAST POST FUND

**Hon. Erminie J. Cohen:** Honourable senators, while we pause on November 11 to remember those who fought for our freedom and lost their lives defending the values we hold dear, I am compelled to speak of the great disappointment many veterans and many Canadians felt when they learned of further cuts to reduce the deficit. The unkindest cut of all, honourable senators, was the reduction of benefits to the Last Post Fund, the fund that provides burial benefits for deceased war veterans whose personal assets are less than \$24,030. Now burial benefits are only available to veterans whose estates are worth less than \$12,015, and this sum includes, for the first time, I believe, the assets of the spouse.

Through the years, many veterans tucked away dollars to save for their spouse's burial, always believing the Last Post Fund would look after them, the least we could do for the many years they served us. I have recently been witness to the dismay and hardship that this cut has caused veterans who, in their eighties, could not comprehend why there was no money for their burials when they could have saved dollars during their earning years had they known this would happen. Surely the government could have found another program to cut and leave those few dollars necessary to give our veterans the burials they deserve.

We are indeed living in unusual times when the dollar becomes more important than the person.

#### CHILD SOLDIERS

**Hon. Landon Pearson:** Honourable senators, as we remember those Canadians who fought, suffered and died during the wars of this century, I should like to commemorate, mourn and reflect upon a group rarely singled out for special attention: the boy soldiers. During the First and Second World Wars, hundreds of underage Canadians enlisted for service, mostly by pretending to be older. There were others who were actually recruits following the tradition and practice inherited from the British army. As a result, the Canadian army had so many boys during the First World War that they were formed into boys' battalions. Although they were supposed to remain in reserve, large numbers made their way to France, and many were wounded and died. Others survived to grow up carrying traumatic memories. These boys deserve respect for their courage and great compassion for their untimely suffering and early deaths. These underage soldiers were only a small percentage, of course, of all the Armed Forces engaged in the world wars.

However, since the end of the Second World War the nature of war has greatly changed. Nowadays, more and more youngsters are being recruited or coerced into warfare at younger and younger ages. On November 11, the United Nations General Assembly in New York will discuss a report on the impact of armed conflict on children, recently delivered to the Secretary-General by Mrs. Graça Machel. This is a powerful document with a moving section on the tragedy of the child soldier pressured into the most dangerous of activities and deprived, if he survives, of anything that is natural to childhood and essential for his development into responsible adulthood.

As Canadians, we must do what we can to change this practice, so heavy with consequences to the children involved and to the rest of us who are vulnerable to the irrational violence of young warriors whose only school has been conflict.

In order to maintain its influence on this issue, I believe that Canada must join with other nations in supporting the optional protocol to the United Nations Convention on the Rights of the Child, raising the age of recruitment into the armed forces from 15 to 17. To fail to do so is to fail to honour the sacrifice of our own soldiers — young and not so young — who died that we might live in peace.

#### ABORIGINAL VETERANS

**Hon. Raymond J. Perrault:** Honourable senators, earlier this week I had an opportunity to meet with a group of aboriginal veterans. Today, it was announced that a scholarship fund has been established for the descendants of aboriginal vets. It was a very moving occasion to see these men — some quite old now, one or two of them from the First World War — so moved that such a fund would be established.

In all the meetings and hearings in which I have been involved, I cannot remember there being any great demand for massive compensation. There were requests for respect, an acknowledgement that the veterans had made a contribution and made a difference in the war.

If we look at the records of those who fought in the First and Second World Wars, we find that those of aboriginal descent fought with uncommon valour and had many medals bestowed upon them for bravery under fire. As one Indian veteran said to me, "We were all equal on the battlefield. When we were stopping bullets at Dunkirk and at the invasion of Europe, we were all equal. We had a camaraderie of matchless proportions. But when we came back home, we were no longer equal. We did not even have the right to vote."

It must be reiterated that John Diefenbaker gave the Indian and the aboriginals the vote in this country, much to his credit and much to the credit of the government of that day, which was of the other great historical party. How we could have allowed this injustice to fester for so long is beyond belief. In relation to the Second World War, it is only necessary to check the lists of Canadian casualties at the time of the invasion of Europe to realize that an almost disproportionately high percentage were

veterans of aboriginal descent. Some still maintained their traditional great scouting instincts and abilities, and they had a special place in our Armed Forces because they had these special talents.

I met with a group of veterans earlier in the week. They were not asking for some massive settlement, but for an acknowledgement of the contribution they had made towards Canada's greatness. The idea was to build a memorial here in Ottawa, which would invite the contribution of all of us to help finance it. It was a moving experience. At the end of the ceremony, sweetgrass was distributed to the veterans who had survived the war, and others who had done what they could to advance the cause of the Indian people.

Honourable senators, some of you read the article yesterday about the massive number of deaths that occurred during the First World War: 300,000 deaths during the first five days of the Somme campaign alone. In Vietnam, 30,000 died. The publicity regarding the massive losses experienced in that tragedy was widespread.

I can recall one occasion when Lester B. Pearson was in Vancouver on a visit. While addressing a small group of people in someone's living room, he said:

After one of the battles, no man's land was covered with the dead and the dying. They were Germans, French, Canadians and all the rest. I said to myself at the time: "Mankind was created for something far better than this."

Honourable senators, that is a good reason for us to pursue the traditional Canadian initiative to keep peace in this world.

It was a great privilege and a pleasure to be with the aboriginal veterans this week. On this issue, all sides of this chamber cooperated to produce that report, which recommends action. It was a good report.

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

[Translation]

**Hon. Marcel Prud'homme:** Honourable senators, I certainly agree with everything that was said by my honourable colleagues on both sides of the house, on the occasion of Remembrance Day. I could make my contribution more personal and explain that I have a reason to do so.

• (1430)

[English]

My brother, who was older than I, was a brilliant student in his last year of college. In 1939, he did not hesitate for a moment in becoming a volunteer. He did not wait for conscription to volunteer to fight. He was the eldest of a large family and it broke my mother's heart forever. For the next 20 years, my mother was never the same.

What I should like to say in homage to these people is something different. I am thinking of all the courageous people who gave their lives, and the others — the families that suffered; the families that were divided. However, I would rather address some remarks to parliamentarians of today. I was once asked by a student, right here in the Senate, while I was addressing a Commonwealth students' association: How do you define war? The question came very spontaneously. I replied: "War is often, if not always, the failure of politicians."

I am thinking today of all the hotbeds of tensions in the world. I wonder if we parliamentarians of the day pay enough attention to the study, scrutiny and analysis of what could bring about war again. These young pages, whom we welcome so warmly here, may be called upon to go and fight on our behalf, because we still have not found a solution.

Over the past six or seven years, I have reflected more on the future and my role as a parliamentarian on Remembrance Day. That is one of the many reasons why, for instance — and I think this is directly related — I defend parliamentary relationships against public opinion. Parliamentary relationships allow members of different backgrounds to know each other.

Senator Bosa, the current president of the IPU, knows that in the old days of real tension, I went forward and created trouble for some of us, even with the security services of Canada, by speaking with people from the so-called "other side." Senator Perrault and I were in North Korea. You should have seen what only one visit could do in North Korea for people who were completely cut off from the rest of the world.

Sometimes we are hesitant and afraid about what people will say or do. However, if we think we are doing the right thing, we should do it. We parliamentarians of the day, who will not be called upon to fight, should pay more attention to international affairs. We should have more understanding of international affairs and should never hesitate to go to so-called "forbidden" cities or places if we think it will enhance the possibility of peace and understanding on the earth.

This is a good day on which not only to reflect and thank warmly and pray for those who have sacrificed their lives for us and for our young people, but also to remember our great responsibility. Every single one of us here, without knowing it, could make a difference. We do not know where or when, but we could make a difference. When we die, we should not be ashamed to have it said of us that "At least he not only paid attention to those who died before, but he did his duty in attempting to avoid a repeat of what had already taken place."

**The Hon. the Speaker:** Honourable senators, if that concludes the comments in homage to our veterans, I propose that we stand for a minute of silence in memory of those gallant Canadians who gave their lives for us.

*Honourable senators then stood in silent tribute.*

• (1430)

## THE ECONOMY

**Hon. Jack Austin:** Honourable senators, as we are now well into the fourth quarter of 1996, I believe we should take note of some of the key features in the performance of the Canadian economy. Of course, the first of these is the continuing success of the government and the Canadian economy in reducing the government's own deficit, which has declined on an annual basis from some \$45 billion at the end of the Mulroney government in 1993 to about \$25 billion at the end of 1996. The government is resolute in staying the course to a zero deficit at about the end of this century. I am speaking about four more years. This trend in deficit reduction signals a continuing shift in the structure of Canadian expenditures away from the public sector and toward the private sector as the prime mover of economic growth.

A second key feature is the record high level of business confidence and growing consumer confidence in Canada. The reduction in interest rates to a 40-year low and mortgage rates to a 30-year low will lead to increases at the rate of about 4 per cent annually in real household spending on consumer durable goods such as new housing and new automobiles.

On interest rates, *The Financial Post* today reports that the five-year mortgage rate dropped to a 31-year low of 6.95 per cent. Robert Fairholm, chief economist at DRI Canada, is quoted as saying, "If you look at where Canada is in terms of slack in the economy, you could still characterize rates as high." Fairholm is also quoted as saying that real rates of return, that is nominal interest charges minus the inflation rate, are now about in line with historical averages. For example, three-month Treasury Bills now have a yield of just below 2.9 per cent. With the inflation rate at 1.5 per cent, the real rate of return is 1.4 per cent.

The Royal Bank of Canada's Economic Group estimates that the Canadian economy is operating at about 3 per cent below potential. Thus, the third feature of the Canadian economy at the end of 1996 is that monetary stimulus may be possible without risking any upward push in the rate of inflation.

Also to be noted is that the unemployment rate is in the range of 9.5 per cent, which is well above the economists' notion of a full employment level. Therefore, Canada also has growth opportunities on the labour side without stirring up inflation.

The Royal Bank projects Canadian economic growth to average 1.4 per cent in 1996, 3 per cent in 1997 and 3.5 per cent in 1998.

**Senator Doody:** How lucky are we?

**Senator Austin:** I will come to the employment creation figures.

**Senator Doody:** I was so delighted to hear that the unemployment figures give us room for growth.

**Senator Austin:** Yes, in employment, of course.

**Senator Doody:** That is an incredible statement.

**The Hon. the Speaker:** Honourable Senator Austin, I regret to inform you that your three-minute time period has expired.

**Some Hon. Senators:** Give him leave to continue.

**The Hon. the Speaker:** Is leave granted for Honourable Senator Austin to continue?

**Hon. Senators:** Agreed.

**Senator Austin:** The fourth feature is the remarkable growth in Canada's exports to the United States and around the world. From 1991 to 1996, the value of our exports nearly doubled. Our exports and trade are at record levels. The Canadian government is projecting export growth in 1997 of 5.3 per cent and in 1998 growth of 6.1 per cent. This compares to import growth of 4.8 per cent and 5.5 per cent respectively. The slack in the Canadian economy below capacity is expected to be taken up in the next two years by housing, automobile sales and business investment in new plants and equipment. Job increases of 255,000 in 1997 and 315,000 in 1998 are projected. The rise in the value of the Canadian dollar relative to the U.S. dollar will stimulate consumer demand in Canada, although it may also affect to some degree our export performance.

Finally, I come to the question of inflation as a necessary stimulus to economic growth. This topic was addressed by Gordon Thiessen, Governor of the Bank of Canada, in a speech in Toronto yesterday. As we have heard from Governor Thiessen many times, the bank's primary policy is to emphasize a stable currency in terms of price stability in the Canadian economy. The primary criticism of this policy is that it condemns the Canadian economy to permanent underperformance. Governor Thiessen completely rejects the thesis that inflation is the necessary lubricant to economic growth. His core belief is that inflation only fools people into believing that their money is more valuable than it really is, therefore encouraging spending decisions that are misconceived as to value and risk and therefore inevitably leading to distortions in the economy requiring drastic remedial measures.

Honourable senators, this is not the end, only the beginning, of a great debate on how to manage the growth of the Canadian economy in the next few years. Can we achieve real growth without inflationary stimulus? What is the way to enhance

Canadian productivity? I will return at a future time to those issues.

[Translation]

## BROADCASTING POLICY

### CONTRADICTION OF MEDIA ALLEGATIONS

**Hon. Jean-Maurice Simard:** Honourable senators, further to a statement I made in this house on October 29 with respect to Bill C-216, *The Toronto Star*, in its edition dated Monday, November 4, 1996, in an article by David Vienneau, published erroneous information. A member of the other place did likewise the same day during Question Period. And again on Tuesday, November 5.

When I say erroneous information, I mean that Vice-President Fernand Bélisle of the CRTC, at a meeting we had recently, never did any lobbying in support of Bill C-216, as was reported by *The Toronto Star* and by Reform Party members.

Honourable senators, it is our duty to examine the bills that come before the Senate and ensure that they have no negative impact and do not deviate from their objectives. That is the case with Bill C-216. I intend to continue my research by consulting with groups, individuals and government agencies, whatever Reform Party members have to say about that, to determine how the bill could be amended so as to make it acceptable to francophone Canadians and all Canadians.

I even said, on October 29, that the intentions of the author of this bill were praiseworthy and acceptable. I asked Fernand Bélisle, Vice-President of the CRTC, for a meeting so that he could clarify some questions I had. Like a good public servant, Mr. Bélisle agreed to my request. And he did not do any lobbying in any way, shape or form.

Mr. Bélisle merely answered my many questions and later sent me the requested documentation. It was not my meeting with Mr. Bélisle that convinced me that Bill C-216, in its present wording, was a bad piece of legislation.

...after consulting experts in the field, after meeting with the Fédération des communautés francophones et acadiennes du Canada, after receiving and reading the letter of the Hon. Senator Gauthier on this issue, and after meeting with the CRTC's top official, I came to the conclusion...

It seems to me that is sufficiently clear. So I cannot ignore these unfair allegations regarding Fernand Bélisle, a dedicated and responsible public servant.

I intend to continue my work on this bill. I fully intend to take part in the debate as soon as my research has progressed.

[English]

November 7, 1996

## ROUTINE PROCEEDINGS

### CRIMINAL CODE

#### BILL TO AMEND—REPORT OF COMMITTEE

**Hon. Sharon Carstairs**, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, November 7, 1996

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

#### SIXTEENTH REPORT

Your Committee, to which was referred Bill S-3, An Act to amend the Criminal Code (plea bargaining), has, in obedience to the Order of Reference of Thursday, May 2, 1996, examined the said Bill and now reports as follows:

Your Committee recommends that this Bill be not proceeded with further in the Senate for the following reason:

This recommendation is based on your Committee's concern that Bill S-3 could infringe legal rights protected by section 11(h) of the *Canadian Charter of Rights and Freedoms* by allowing an accused to be punished more than once for the same offence.

Respectfully submitted,

SHARON CARSTAIRS  
*Chair*

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

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

[Translation]

### TRANSPORTATION SAFETY AND SECURITY

#### REPORT OF TRANSPORT AND COMMUNICATIONS COMMITTEE REQUESTING AUTHORIZATION TO TRAVEL FOR PURPOSE OF PURSUING STUDY PRESENTED

**Hon. Lise Bacon**, Chair of the Standing Senate Committee on Transport and Communications, presented the following report:

The Standing Senate Committee on Transport and Communications has the honour to present its

#### SIXTH REPORT

Your Committee, which was authorized by the Senate on October 2, 1996 to examine and make recommendations upon the state of transportation safety and security in Canada and to complete a comparative review of technical issues and legal and regulatory structures with a view to ensuring that transportation safety and security in Canada are of such high quality as to meet the needs of Canada and Canadians in the twenty-first century and to present its final report no later than December 31, 1997, respectfully requests that it be empowered to adjourn from place to place within and outside Canada and to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of its study.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

LISE BACON  
*Chair*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

**Senator Bacon:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(g), I move that this report be now adopted.

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

**Hon. John Lynch-Staunton (Leader of the Opposition):** No.

**The Hon. the Speaker:** Honourable senators, since leave has not been granted, we will get back to this later. Does the Senate agree to get back to this matter later today?

**Hon. Senators:** Agreed.

[English]

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### TWELFTH REPORT OF COMMITTEE PRESENTED

**Hon. Colin Kenny:** Honourable senators, I have the honour to present the twelfth report of the Standing Senate Committee on Internal Economy, Budgets and Administration, regarding a proposal to extend benefits and entitlements to individuals who are now on contract with senators.

I ask that the report be printed as an appendix to the *Journals of the Senate* of this day.

(For text of report, see today's Journals of the Senate.)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

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

## CANADA-ISRAEL FREE TRADE AGREEMENT IMPLEMENTATION BILL

### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-61, to implement the Canada-Israel Free Trade Agreement.

Bill read first time.

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

On motion of Senator Graham, bill placed on the Orders of the Day for second reading on Tuesday, November 19, 1996.

## QUESTION PERIOD

### CANADA-CHINA RELATIONS

#### TRIAL AND IMPRISONMENT OF DISSIDENT WANG DAN— GOVERNMENT POSITION

**Hon. Consiglio Di Nino:** Honourable senators, before I ask my question I should like to welcome the Leader of the Government in the Senate back to the chamber. I trust that she is feeling better and I hope that we do not put too much strain on her voice today.

Last week, Chinese authorities sentenced a courageous Chinese dissident to 11 years in prison. Wang Dan's only crime is to have dedicated his life to the defence of human rights for himself and his fellow Chinese. This Chinese government action has been universally condemned.

My question for the Leader of the Government in the Senate is this: Has the Canadian government communicated with the Chinese government about this barbaric act; and, if so, what did the communication contain?

**Hon. Joyce Fairbairn (Leader of the Government):** Honourable senators, my recollection is that the Canadian government has expressed its views on this matter. I should like to get an exact answer for my honourable friend.

**Senator Di Nino:** Honourable senators, the U.S. Secretary of State and the German President have both stated publicly that they will raise this issue with Chinese leaders when they visit China next month. Could we obtain a commitment from you, Madam Minister, that the Canadian government will also raise this issue with the Chinese authorities when the Prime Minister visits China next month, and to report to this chamber?

**Senator Fairbairn:** Honourable senators, I will communicate the question of my honourable friend to the proper people and obtain an answer for him.

I repeat what I have said on a number of occasions. The federal government, through the Prime Minister, the Minister of Foreign Affairs and others, continues to express its views strongly to the Chinese authorities on the question of human rights abuses. I will pass my friend's question on to them.

**Hon. Marcel Prud'homme:** Honourable senators, I should like to ask the Leader of the Government in the Senate if it is at all possible to obtain a transcript of the trial that took place. In that way, senators could draw their own conclusions of what took place in China concerning this trial.

**Senator Fairbairn:** Honourable senators, as I have indicated, the Prime Minister and the government have expressed concern about the conduct of this trial. I understand that there are plans to appeal the decision. I will try to follow up my honourable friend's suggestion. I do not know whether it is possible to obtain a copy of the transcript that he requests.

## ATOMIC ENERGY OF CANADA

#### SALE OF NUCLEAR REACTORS TO CHINA— REQUEST FOR DETAILS OF SAFEGUARDS

**Hon. A. Raynell Andreychuk:** Honourable senators, in order to save her voice today, could the Leader of the Government in the Senate tell us at a later date how this quiet diplomacy has borne fruit? Could she give us some examples of areas in which it is felt that the initiatives of quiet diplomacy, as opposed to a more aggressive stand on human rights, has paid off sufficiently for the Canadian government to determine that the sale of nuclear reactors is acceptable at this time?

• (1450)

With regard to the pending deal, what assurances are there that safeguards, if any, will be included in the contract, beyond the assurances and safeguards that were written into previous arrangements with Romania, India and other countries?

**Hon. Joyce Fairbairn (Leader of the Government):** I will preface my comments to my honourable friend by thanking colleagues on both sides of this house for their expression of good wishes and goodwill yesterday. Those wishes were sufficient to return to me what voice I have today, which was not there yesterday. I thank all colleagues, particularly Senator Corbin.

On the question that my honourable friend has asked, I will seek to obtain a written response for the honourable senator concerning the details of any nuclear safeguards.

On the matter of a demonstration of response from the Chinese on our concerns over their human rights conduct, my honourable friend already knows that one area of discussion that has been opened up with the Chinese government is that of the rule of law and the reform of the court system in that country. That is one area that remains of great concern to Canada, and it remains a topic of discussion between the two countries, as does the question of the training of judges, in the hope that these continuing discussions will make a difference in the court system in China.

I understand my honourable friend's concerns, and I will add anything else that I can in writing.

### LITERACY

#### FAILURE TO REMOVE GST FROM READING MATERIALS— EFFECT ON UNDERPRIVILEGED— GOVERNMENT POSITION

**Hon. Consiglio Di Nino:** Last week, the Minister of Finance made an announcement about the removal of the Goods and Services Tax on books for certain institutions, educational and municipal. What he did not tell us is that most of those books already had large rebates attached to them.

Honourable senators, the ability of Canadians to read in today's high-tech world is critical to their competitiveness, and Mr. Martin's announcement will do little to help the hundreds of thousands of Canadians who are not attending schools yet are still confronted with the challenge of advancing their skills. By failing to remove the GST on all reading materials, Mr. Martin has not recognized the needs of these Canadians to improve their reading skills.

Can the Minister who has special responsibility for literacy acknowledge that the government, by not taking this action, is denying these Canadians an opportunity to improve their economic conditions and quality of life?

**Hon. Joyce Fairbairn (Leader of the Government):** Honourable senators, I have repeatedly shared my concerns

about the tax on books in this country. However, I disagree with my honourable friend's comments regarding the statement made by the Minister of Finance. The scope of that statement extended beyond learning institutions to public libraries and also to volunteer organizations such as those involved in the field of literacy.

The minister made very clear his commitment, and the commitment of the government, to the issue that my friend and I share as a cause, and he and I will continue to discuss additional ways in which objectives can be met.

**Senator Di Nino:** Honourable senators, I agree that the minister has shown a dedication to this cause, which I both respect and appreciate. However, by way of supplementary, Madam Minister, as the minister with special responsibility for Literacy, do you support the removal of the GST on reading material?

**Senator Fairbairn:** Honourable senators, I have always supported the removal of the GST on reading material. I also operate as a partner with my colleague the Minister of Finance on this issue. He has worked very hard, very diligently and certainly cooperatively to make the advances that he has made. He is operating within a certain framework that involves constraints. He went a considerable way in his efforts, as detailed in his announcement approximately three weeks ago. I support those efforts, and I will work with him to further advance the cause of literacy.

**Senator Lynch-Staunton:** Martin helped write the Red Book.

**Senator Doody:** He got the Pulitzer prize for fiction.

### DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. B. Alasdair Graham (Deputy Leader of the Government):** Honourable senators, I have a response to a question raised in the Senate on May 11, 1995 by the Honourable Senator Spivak regarding an oriented strandboard plant in Saskatchewan; a response to a question raised in the Senate on December 5, 1995 by the Honourable Senator Spivak regarding federal environmental assessment of forestry projects; a response to a question raised in the Senate on June 13, 1996 by the Honourable Senator Spivak regarding cuts in funding to the experimental lakes area; a response to a question raised in the Senate on October 30, 1996 by the Honourable Senator Jessiman regarding the failure of the Canada-European Union action plan; a response to a question raised in the Senate on October 21, 1996 by the Honourable Senator Gustafson regarding crop loss in the prairies due to an early snowfall; and a response to a question raised in the Senate on December 12, 1995 and again on November 5, 1996 by the Honourable Senator Balfour regarding the sale of Airbus aircraft to Air Canada.

## ENVIRONMENT

### ORIENTED STRANDBOARD PLANT IN SASKATCHEWAN— EXTENSION OF ENVIRONMENTAL REVIEW TO COVER DOWNSTREAM EFFECTS IN MANITOBA— GOVERNMENT POSITION

*(Response to question raised by Hon. Mira Spivak on May 11, 1995)*

The *Canadian Environmental Assessment Act* applies in situations where agencies and departments of the government of Canada have a direct decision-making responsibility. With respect to the projects mentioned by the Honourable Senator, there are no identified federal decisions required which would trigger the *Canadian Environmental Assessment Act*.

Environmental assessment of the projects is being conducted under the respective provincial legislation. Technical experts of federal departments are participating in the provincial processes.

This government recognizes the concerns that have been raised with respect to the transboundary and cumulative effects of the projects proposed in this region. The Minister of the Environment has been assured that there are ongoing discussions between Manitoba and Saskatchewan on the effects of forestry projects in the respective provinces.

## MANITOBA

### FEDERAL ENVIRONMENTAL ASSESSMENT OF FORESTRY PROJECTS—GOVERNMENT POSITION

*(Response to question raised by Hon. Mira Spivak on December 5, 1995)*

The *Canadian Environmental Assessment Act* applies in situations where agencies and departments of the Government of Canada have a direct decision-making responsibility. With respect to the Louisiana Pacific forest industry development project, there are no identified federal decisions required which would trigger the *Canadian Environmental Assessment Act*.

An environmental impact assessment of that project has been conducted under the *Manitoba Environment Act* with public hearings by the Manitoba Clean Environment Commission. Manitoba's hearings on the project were completed in January and the commission's report was submitted to the Manitoba Department of the Environment on March 22. Federal departments participated in the provincial public review process.

The former Minister of the Environment wrote to her provincial colleague indicating that if, at the conclusion of the provincial process there remain significant adverse environmental effects related to areas of federal jurisdiction, she would then have to consider the potential federal role in addressing the outstanding issues.

The Manitoba Department of the Environment has issued a licence for this project which sets out terms and conditions for the proposed forest harvesting activities. The Minister of the Environment reviewed these terms and conditions carefully as they relate to areas of federal jurisdiction and decided not to refer this project to a public review.

## THE ENVIRONMENT

### CUTS IN FUNDING TO EXPERIMENTAL LAKES AREA— GOVERNMENT POSITION

*(Response to question raised by Hon. Mira Spivak on June 13, 1996)*

The original Program Review cuts to the Department of Fisheries and Oceans' freshwater science program were based on the premise of complete devolution of the department's habitat management responsibilities to the inland provinces. With the devolution of habitat management responsibilities, there would no longer be the need to continue providing freshwater science in support of the department's habitat management role in the inland provinces. However, since the original Program Review decisions were made, the department's fish habitat management role in the inland provinces has changed. The department will continue to have a significant role in the review of large development projects with the potential for serious environmental impacts. This change, along with broader reaching federal science initiatives and the loss of Green Plan funding in 1997 prompted the Minister to re-evaluate the original Program Review cuts to his department's freshwater science program. The Minister decided that the original cuts were too deep and he announced a re-allocation of \$1.8 million to the budget for fish habitat and other freshwater research.

The \$1.8 million adjustment to the freshwater science program will result in 23 more jobs than would have been the case under the original Program Review Plan. While the freshwater science program will be reduced by approximately 40%, matching the overall departmental reduction level, a critical mass of scientists will be maintained within the freshwater science program at the department's Freshwater Institute. The funding adjustment

will allow projects to continue at the Freshwater Institute's Experimental Lakes Area and permit new experiments to be devised consistent with the department's continuing freshwater science mandate. It should be noted that there was never any danger of the Freshwater Institute closing as a result of the originally planned Program Review cuts to the freshwater science program as freshwater science is only one component of the work conducted at the Institute.

### **FISHERIES AND OCEANS**

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

*(Response to question raised by Hon. Duncan J. Jessiman on October 30, 1996)*

The fisheries bill tabled in Parliament on October 3, 1996, provides for the integration of the Coastal Fisheries Protection Act into the new Fisheries Act.

The provisions introduced by Bill C-29 relating to high seas enforcement are simply being transferred from one piece of legislation to another, and the net legal effect in this regard is neutral.

Canada remains firmly committed to conclusion of an action plan with the European Union.

Canada remains open to European suggestions on how to finalize the action plan, or indeed, any other approach to consolidate the transatlantic relationship.

### **AGRICULTURE**

#### **DESTRUCTION OF CROPS BY EARLY SNOWFALL— AID TO PRAIRIE FARMERS—GOVERNMENT POSITION**

*(Response to question raised by Hon. Leonard J. Gustafson on October 21, 1996)*

As of October 25, 1996, approximately 90-95 percent of the harvest was complete across the Prairies. By province, the percentages are as follows: Manitoba — is completed; Saskatchewan — 95 percent; and Alberta — 85 percent.

Despite the recent storms, production this year will come in at 65.1 million tonnes — a record harvest. The previous record of 62.1 million was set in 1986. Weather conditions

have delayed the harvest somewhat, but overall, this year's harvest is only ten percent later than what it has averaged over the last ten years.

The federal and provincial governments assist producers across Canada with significant financial protection against weather related crop losses, through government safety net programs. The Federal-Provincial Crop Insurance program is specifically designed to protect producers against crop losses, such as those that occurred in the Prairies. It provides direct compensation to insured producers for yield and quality losses which can result in reduced revenues.

In addition to Crop Insurance, most producers participate in the Net Income Stabilization Account (NISA) program. NISA encourages producers to build up funds for use in periods of difficulty, by matching producer contributions on a dollar for dollar basis and by providing a three percent bonus each year a producer's contributions are held on account. The funds in a producer's NISA account can be drawn on if revenues, due to weather related (or any other) losses, fall below the five year average. Currently, prairie producers have over \$1 billion in their NISA accounts.

As well, the Minister of Agriculture and Agri-Food may authorize the Canadian Wheat Board to make advance payments for unthreshed grain. The legislation states that this decision can be taken no sooner than November 15, 1996.

Naturally, the ideal would be that the whole crop be harvested this fall. Should this not be possible, existing safety net programs are in place to assist with the losses which could result.

### **JUSTICE**

#### **SALE OF AIRBUS AIRCRAFT TO AIR CANADA—ALLEGED CONSPIRACY TO DEFRAUD FEDERAL GOVERNMENT— KNOWLEDGE OF GOVERNMENT MINISTERS— REQUEST FOR PARTICULARS**

*(Response to question raised by Hon. R. James Balfour on December 12, 1995)*

The Solicitor General became aware that the letter of request had been sent on November 9, 1995.

## ORDERS OF THE DAY

### JUDGES ACT

#### BILL TO AMEND—THIRD READING

On the Order:

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

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

(a) in clause 4 on page 3:

(i) by replacing line 13 with the following:

approval of the Council.,

(ii) by replacing line 15 with the following:

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

(iii) by deleting lines 23 to 31; and

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

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

(2) Where a judge requests a leave of absence pursuant to subsection 54(1) to perform judicial or quasi-judicial duties for an international organization of states or an institution of such an organization, the Council may, at the request of the Minister of Justice of Canada, approve the undertaking of the duties.

**Hon. John G. Bryden:** Honourable senators, clause 5 of Bill C-42 is an amendment of general application regarding international activities of Canadian judges. Its purpose is to clarify the terms under which judges can engage in activities abroad, such as technical assistance projects in developing countries. It would change the existing law by allowing judges

who participated in such activities, with the authorization of Canada, to receive expenses directly from an international forum. It would also establish a framework within which judges could, with the authorization of Canada, work for an international organization of states or an institution thereof. Such a judge could, with the approval of the Governor in Council, and after consultation with the chairman of the Canadian Judicial Council, request a leave of absence without pay in order to be paid directly by the international organization.

Honourable senators, during the consideration of Bill C-42 in this chamber and in the Standing Senate Committee on Legal and Constitutional Affairs, certain concerns were expressed about the implications for judicial independence of certain aspects of clause 5. It has become evident that, in order to obtain passage of this bill without further delay, the government will need to agree to amend clause 5 so as to restrict its application to one specific case: that of Madam Justice Arbour, who is presently serving as prosecutor to the International War Crimes Tribunal.

**Senator Lynch-Staunton:** Illegally, too.

**Senator Bryden:** After discussions with senators opposite, we have agreed to such an amendment, in preference to the amendments proposed by the Honourable Senator Nolin. The amendment that I am tabling today would limit clause 5 to authorizing Madam Justice Arbour to take a leave of absence for the purpose of serving as the chief prosecutor to the UN War Crimes Tribunal for the former Yugoslavia and Rwanda. It would also permit her to take leave without pay and to receive salary and expenses directly from the UN in connection with her services as chief prosecutor. In other words, by this amendment, clause 5 would cease to be a general amendment to cover the use of Canadian judges for international activities.

I would add that yesterday the Minister of Justice wrote to the Canadian Judicial Council to see if they had any objection to such an amendment. The council replied, saying that they had no objection to that type of provision.

#### MOTION IN AMENDMENT

**Hon. John G. Bryden:** Honourable senators, therefore I move that Bill C-42 be not now read the third time, but that it be further amended as follows:

1. *Page 1, preamble:* Strike out line 1 and substitute the following:

WHEREAS the Canadian Judicial Council has been consulted with respect to certain provisions of this Act, particularly section 5, and agrees with the purpose of section 5;

NOW, THEREFORE, Her Majesty, by and with the advice and

*Pages 4 and 5, clause 5:* Strike out lines 11 to 45 on page 4 and lines 1 to 35 on page 5 and substitute the following:

**56.1** (1) Notwithstanding section 55, Madam Justice Louise Arbour of the Ontario Court of Appeal is authorized to take a leave from her judicial duties to serve as Prosecutor of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia and of the International Tribunal for Rwanda.

(2) Madam Justice Louise Arbour may receive moving or transportation expenses and reasonable travel and other expenses, in connection with her service as Prosecutor, from the United Nations.

(3) Madam Justice Louise Arbour may elect to take a leave of absence without pay for the purpose described in subsection (1), in which case she is not entitled to receive any salary or allowances under this Act for the duration of the leave, but may receive remuneration from the United Nations for her service as Prosecutor.

(4) If Madam Justice Louise Arbour elects to take a leave of absence without pay under subsection (3), she shall not continue the contributions required by section 50 for the duration of the leave and that section does not apply to her for the duration of the leave, which duration shall not be counted as time during which she held judicial office for the purposes of sections 28, 29 and 42.

(5) For the purposes of subsections 44(1) and (2), section 46.1 and subsection 47(3), if Madam Justice Louise Arbour dies while on a leave of absence without pay, she is deemed to be in receipt at the time of death of the salary that she would have been receiving if she had not been absent on leave without pay.

Honourable senators, I have copies for distribution.

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

[Translation]

**Hon. Pierre Claude Nolin:** Honourable senators, I have had the privilege of examining the wording of the amendment proposed by Senator Bryden. I must admit that I support it, and if it is approved by this house, I shall therefore withdraw my motion.

Honourable senators, all of us in this house have examined this bill introduced by the government with a great deal of interest. I believe I speak for all of us in saying that the questions raised during study of this bill turned out to be far more basic than originally expected. I believe this is one of the reasons the government has agreed to introduce this amendment.

The independence of the judicial branch is one of the elements that it is the duty of all Canadian parliamentarians to protect and

defend. The independence of our judges is one of the last bulwarks in the respect of this country's democratic values. All of us in this house have attempted to find the best solution, given the national and international realities with which Canada is faced, and I therefore believe we must support this amendment.

On this side, it has never been our wish to prevent Canada from meeting its international responsibilities; far from it. We have, however, been faced with a conflict of jurisdiction. How can we settle these conflicts when Canadian constitutional rules contradict those of international authorities? We have had to examine the pros and cons, and I believe the compromise submitted is a valid one. Madam Justice Arbour must be able to put her abilities at the service of all people in the world who believe in the respect of democratic values and who are working to ensure that respect.

As Senator Bryden has said, in drafting this compromise, we suggested that the new clause 5 of the bill be submitted to the Canadian Judicial Council, for obvious reasons. We feel it is appropriate for any changes to the Judges Act to obtain the approval of the Canadian Judicial Council. As I have already told you in the past, this creation of the Parliament of Canada is a highly useful entity, one we must make use of. It is a group of judges responsible for the proper administration of the judiciary power in Canada. We felt it was appropriate, and feel that it would be appropriate in future as well, for the Canadian Judicial Council to intervene in any modifications to be made to the Judges Act.

I believe I have covered the important elements of the amendment proposed today. I suggest you adopt it. If it is passed, I will withdraw my motion in amendment accordingly.

[English]

**Hon. A. Raynell Andreychuk:** Honourable senators, I should like to voice my support for the amendment that Senator Bryden has put forward. Since this issue came before the Senate, we have come to agree that this is not merely a housekeeping bill. Many things in the bill are good and necessary.

One might argue why an increase of \$3,000 for chief judges should be brought to this Parliament for scrutiny. The Constitution demands it. It is not the dollar amount that is important. What is important is that there be this kind of parliamentary scrutiny and that there be a buffer between the executive arm of the government and the judiciary.

• (1510)

When I read the bill, I felt that it was appropriate in most places but for clause 5, which would violate judicial independence. In my opinion, it is a constitutional issue, a judicial independence issue, but it also has to do with Canada's integrity in international fora. As to judicial independence, I agree with what Senator Carstairs said, that the government must

retain overall responsibility for the welfare of Canada, particularly the financial aspects. However, it would be wrong if the government had the final say on how the courts are administered, which is the judicial independence aspect. That is why we strived for 30 years to have a judicial council that would act as a buffer between the executive arm and the judicial arm. I think it is working relatively well. It needs to be improved, but the concept of the judicial council looking into the administrative matters of the courts is extremely important.

The original clause 5 circumvented the judicial council, the buffer, for judges assigned to the international field. I did not hear many voices — although there were some notable exceptions — indicating that judges should not contribute to Canada's welfare in international issues. For example, Senator Fairbairn talked about assigning judges to China to help them understand the rule of law. That is a commendable and important role that Canadian judges can play.

The issue is not whether judges should be involved in international fora. The issue is how and when. Such action should not compromise our independent judiciary, and we must ensure that we do not violate our own laws in the process. What kind of example would we be to the Chinese and the rest of the world if we were to break our own laws?

Without the amendment put forward by Senator Bryden, that implication would remain there in the bill. Consequently, I respect the fact that the government, after hearing the comments made in this chamber, has chosen not to impose a generic rule, has restricted it to Madam Justice Arbour, and has withdrawn the proposal for a general application of the rule to a further time.

I have been led to believe that there were some consultations with the judicial council before the bill was drafted, but I have no idea of what those consultations involved. I believe the review of what is an appropriate task in an international forum must rest with the judicial council. In this case, given the preamble that has been added in clause 5, I am presuming that the judicial council has done its job and, in fact, is agreeing to Madam Justice Arbour's role in the prosecution of war criminals. I also presume from the preamble that we are indicating that, at this point, we have weighed judicial independence with Canada's contribution to, and reputation in, international fora and feel that this is a good compromise.

I have no idea how Justice Arbour got to Europe. I have no idea how the judicial council viewed her role. It is important, however, that from this point on, Canada's integrity not be jeopardized and that we have, in fact, now complied with the rules.

Is this a reasonable answer to the questions that we have raised? I think it is. Is it the most ideal? I am not sure it is. I would have hoped that the rules were in place and that we were not entrapped by a specific example before us. However, the fact of

the matter is it was a *fait accompli* when it arrived here. Madam Justice Arbour had accepted in some manner her position, although it was not made clear to us under what terms and conditions.

We have been told she is there under an Order in Council. I think both of those issues should be left to other environments to determine their propriety. What happened before the bill came here, I believe, may be the subject of some discussion before other bodies and institutions.

We were left with the conundrum of supporting Canada, its international reputation and humanitarian laws, while being asked to violate judicial independence and section 100. With this amendment we have found a reasonable compromise to ensure that our internal laws are abided by and, at the same time, that we live up to our international obligations.

I hope that we have learned a lesson from this experience, that we are not setting a standard of proof for other countries, that we are not going overseas with muddled hands, that the Canadian Judicial Council, the Government of Canada, and particularly the Minister of Justice — who is responsible for justice in this country, a very high and onerous task — will reflect upon this exercise that we have gone through. If we are to have judges go overseas on leaves in similar situations and in unique situations, I hope that the judicial independence of judges will be respected, that the judicial council will conduct a full and adequate review of the issue involving not only Chief Justices who sit on the council but also the judges whom the Chief Justices represent, and that the department and the minister will involve the public at large before they establish any broad rule.

I could say many other things on this issue, because it is important and dear to me that we keep our reputation as unblemished overseas as it is in Canada.

I can only reiterate the words of the Honourable Charles Dubin in his recent decision on the issue of Mr. Justice Isaac and Mr. Thompson of the Department of Justice. I think the report was circulated to all senators. The report is entitled "Report on Communications Between Justice Officials and the Courts."

At page 31 of the report, the Honourable Charles L. Dubin, QC, LLD, states:

The preamble to our Constitution declares that one of the principles upon which our Canadian democratic society is founded is the supremacy of the rule of law. But the rule of law is not a law in itself, it is an ideal. Over the centuries since the time of Aristotle, people have sought to be governed not by the rule of a tyrant or of an unruly mob, but to be governed by the rule of law, a law equally applicable to the powerful and the weak, the rich and the poor, without discrimination.

Since the rule of law is not a law in itself, it is dependent upon acquiescence and not force. It is premised on the proposition that once an issue has been resolved, and after all legal recourse has been resorted to, the decision will be acquiesced in, leaving it to those who are dissatisfied to seek, by legal and democratic means, to change the law, or the way the law is administered if they think it unjust.

However, our justice system can function only so long as it continues to have the confidence of the public it was designed to serve. Public confidence in the administration of justice is essential for its efficacy. That confidence cannot be assumed. It must be earned.

To have that confidence, the public must be assured of the impartiality of the judge. That impartiality can only be ensured if the judge is completely independent. Independence of the judiciary is not a perk of judicial office, or something to appeal to the vanity of the judge. It is there to guarantee impartiality.

• (1520)

Honourable senators, I think this amendment will effectively withdraw the generic element of clause 5. Therefore, we have maintained confidence in our judicial system, and have not violated the rules or the Constitution. More important, by narrowing this provision to Justice Arbour, I think we will send her overseas with that impartiality, so that those who may be judged before her will truly understand what an impartial system gives to their system. Those who will be preoccupied with the outcome, the victims in Bosnia and Rwanda, will know that justice can be served within the rule of law. I support the amendment.

**Hon. Dalia Wood:** Honourable senators, I wish to state my concerns for the record. To begin with, I am pleased the government has tabled an amendment to the bill regarding the international use of Canadian judges. This amendment deals with some of my concerns. However, I am of the opinion that the amendment does not go far enough. Clause 3 of Bill C-42 should also have been amended to reflect Parliament's continued commitment to judicial independence and to the public's perception of judicial impartiality.

The timing of this judicial pension reform provision could not have been worse. The Chief Justice of the Supreme Court and his wife appear to be the only current beneficiaries of such a reform. The fact that this reform is taking place months before the Supreme Court is to rule on the Minister of Justice's secession references is completely unacceptable.

The public's perception of the Chief Justice's impartiality could be tainted, as many Canadians will ask themselves: How can anyone who stands to gain hundreds of thousands of dollars in pension benefits remain impartial and independent? How can the citizens of the province of Quebec be expected to take the

Supreme Court's ruling seriously when its Chief Justice has just been granted such a benefit?

Honourable senators, I wonder how the Ministry of Justice, when drafting this bill, could have overlooked this direct threat to judicial independence, the cornerstone of judicial impartiality? Professor Ted Morton, who testified before the Standing Senate Committee on Legal and Constitutional Affairs when it considered Bill C-42, wondered the same thing.

With clause 3, we are tinkering with one of the most fundamental pillars of our justice system. Judicial independence is more than a simple rule — it is a doctrine that was put into place to ensure that the public could have faith in the judges who are sitting in judgment of them and of their cases. We should not be so quick to toss such historical protections aside for the sake of a few individuals. It is for these reasons that, if this matter comes to a vote, I shall abstain.

[Translation]

**The Hon. the Speaker:** Senator Nolin, are you asking that your amendment be withdrawn?

**Senator Nolin:** Honourable senators, I will withdraw my amendment if Senator Bryden's amendment is approved. I will let you decide how to go about doing this.

**The Hon. the Speaker:** Honourable senators, the best thing would be for you to ask that your amendment be withdrawn now.

**Senator Nolin:** I ask that my amendment be withdrawn.

**The Hon. the Speaker:** Does the Senate agree to let Senator Nolin withdraw his amendment?

**Hon. Senators:** Agreed.

[English]

**The Hon. the Speaker:** Honourable senators, we have before us the motion in amendment from the Honourable Senator Bryden. Do you wish me to read the amendment?

**An Hon. Senator:** Dispense.

**The Hon. the Speaker:** Does any other senator wish to speak on this matter?

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, before we pass to the vote, I should like to point out that once again the Senate has come to play the role that it was thought it should play when it was incorporated, that of a chamber of sober second thought. This bill went through the House of Commons in less than half a day on June 18 of this year. Parliamentarians over there were in a rush to get home. This bill was properly put before the House. The government quite properly insisted it be passed, and the opposition, quite improperly, passed it without any study, any thought, anything except their concerns about meeting travel plans for the summer.

Fortunately, members on both sides looked at the bill in June and said "Let us look at it again in the fall." Here we are today, with a government realizing that it had challenged certain constitutional safeguards. Whether it has admitted that or not, it certainly has agreed to a major amendment to this bill, an amendment that, all of us agree, improves the bill and settles one particular case that has proved to be an embarrassment to all of us. The government should have proceeded that way in the first place. That was its decision at the time. Fortunately, the Senate of Canada has been able to bring to this bill changes that should have been incorporated in the original text.

Honourable senators, I think we have reason to be proud of our contribution to the parliamentary process. At the same time, we should deplore the lack of responsibility shown by the opposition in the other place.

**The Hon. the Speaker:** Honourable senators, does any other Senator wish to speak?

If not, the question before the Senate is the amendment proposed by Senator Bryden, seconded by Senator Milne, that Bill C-42 be amended by replacing —

**Senator Graham:** Dispende.

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

**Hon. Senators:** Agreed.

Motion in amendment adopted.

**The Hon. the Speaker:** Honourable senators, we are now back to the main motion. Does any honourable senator wish to speak on the main motion as amended?

**Hon. Anne C. Cools:** Honourable senators, old soldiers do not die. They do not even fade away. They just come back again and again.

I wish to speak to the main motion as amended, particularly to the few issues that I thought were important and that have not been addressed by the government in the discussion today.

Further to my speeches of October 1 and October 27, 1996, I shall now continue to uphold the principles of judicial independence, the public's interest in judicial independence, parliamentary sovereignty and the independence of senators and Parliament.

Bill C-42, clause 3, called the Lamer amendment, states:

Subsection 44(3) of the Act is replaced by the following:

(3) No surviving spouse is entitled to receive more than one annuity under this section.

(4) No annuity shall be granted under this section to the surviving spouse of a judge if before, on or after July 11, 1955, the surviving spouse married the judge after the judge ceased to hold office.

Clause 3 allows a judge's spouse to collect more than one pension when the judge's spouse is also a judge. The Department of Justice informed me that there is only one such judicial couple, Chief Justice Antonio Lamer, Supreme Court of Canada, and Madam Justice Danielle Tremblay-Lamer, Federal Court of Canada Trial Division, that they were married in 1987 and that Justice Tremblay-Lamer was appointed judge on June 16, 1993.

Honourable Senators, I shall review the opinion of Canada's leading academics on Canada's judiciary on clause 3 of Bill C-42. Professor Peter Russell, recently retired from the University of Toronto and author of the famous book *The Judiciary in Canada: The Third Branch of Government*, said:

It is very troubling that a main beneficiary of the change is the chief justice. That raises questions of whether there was any communication between him and the government. I think the public deserves some answers.

Professor Russell also queried:

What public good is being served by the change? One pension is enough for any Canadian and any Canadian judge. Two is one too many.

Professor Christopher Manfredi, political scientist, McGill University, opined that the Lamer amendment should not apply to judges currently on the Bench. He concluded:

That is the only way to avoid the impression of impropriety.

Professor Guy Laforest, political scientist, Laval University, on this clause said:

It is imprudent ... to smooth out Lamer's pension, ...

These academics are reported in an article "All In the Family: Rock's Amendments to the Judges Act Seem Tailor-made for Lamer and Arbour," by Peter Verburg in the *Alberta Report*, October 28, 1996.

On October 17, 1996, Professor F.L. (Ted) Morton, political scientist, University of Calgary, testified at the Senate Committee on Legal and Constitutional Affairs on this Bill, that:

Without imputing any illicit motive to anyone involved in these changes, I must observe that the timing of this proposed change could not be worse. The pension change is before the Senate at the very time that Mr. Rock is proceeding to the Supreme Court with a reference...it invites the charge that the pension benefits that would accrue to the Chief Justice, or more probably his wife, payments that could be in the millions of dollars, compromise the requirement of the appearance of impartiality.

...Sceptics can, and I suggest will, claim that it is unacceptable for a Chief Justice who is about to benefit from Mr. Rock's proposed pension policy change to also sit in judgment on Mr. Rock's Quebec reference, the most politically sensitive constitutional case of this decade.

• (1530)

Professor Morton continued:

...behind the 'technical amendments' of Bill C-42 there appears to be a series of questionable judgments and indiscretions.

These four scholars of the judiciary were unanimous. They condemned Bill C-42's clause 3, all on like ground, that of judicial independence, judicial impartiality, and the public perception of the Supreme Court of Canada.

Honourable senators, Canadians are anxious about Canada's future as a nation. Minister of Justice Allan Rock's press release of September 26, 1996, announced his plan to refer "fundamental legal questions concerning Quebec's secession from Canada to the Supreme Court of Canada". In the House of Commons on that same date, Minister Rock said that he would put three questions to the court, because the Supreme Court was the proper forum to make these decisions, because these issues must be "raised in the place where they are best resolved: in the highest court of the land." Anticipating the Supreme Court decision, Minister Rock said:

I have every confidence that the courts will endorse and accept the position that I have put forward.

I repeat: The minister told us that the Supreme Court will support and accept his position. Simultaneously, Bill C-42 enhances the powers, position and personal benefits of Chief Justice Antonio Lamer of that very same court.

Honourable senators, as we await the Supreme Court's decision, I thought we should search history for guidance and review the last constitutional reference to the Supreme Court of Canada, being the 1981 Patriation Reference made by then Liberal Prime Minister Pierre Elliott Trudeau. The question he referred was the repatriation of the British North American Act by resolution for joint address to Her Majesty Queen Elizabeth.

A decade later, in 1991, Mr. Trudeau spoke on the Supreme Court decision with candour, reflection and retrospection. The occasion of this remarkable speech was the opening of the Bora Laskin Law Library at the University of Toronto in 1991. Mr. Trudeau spoke frankly and unreservedly about that 1981 decision. Speaking as a former prime minister, an eminent constitutional lawyer and jurist, he described it as "the fateful Supreme Court decision on the patriation of the constitution." He described it as the Supreme Court's "performance as political arbiter." Mr. Trudeau provided a thorough critique of the

majority decision in the patriation references by Supreme Court Justices Jean Beetz, Julien Chouinard, Brian Dickson, Ronald Martland, Roland Ritchie and Antonio Lamer from Quebec, now Chief Justice of the Supreme Court. He told that the reasoning of the dissenting justices Willard Estey, Bora Laskin and William McIntyre was the "...better law,...the better common sense,..." and "...was...also the wiser council." His speech was an insightful and brilliant piece of work and provides welcome assistance to the study of recent developments in this country's body politic and judicial institutions. Mr. Trudeau explained the differences between justiceable and non-justiceable questions. He distinguished between those questions for judicial consideration and those for parliamentary consideration. He distinguished the judicial role of the courts from the political role of Parliament, saying:

Courts had often in the past refused to answer questions deemed unsuitable for judicial determination.

About the Supreme Court's answers to certain questions, Mr. Trudeau said:

In choosing to answer the question there is little doubt that the Supreme Court allowed itself — in Professor Hogg's words, 'to be manipulated into a purely political role' going beyond the lawmaking functions that modern jurisprudence agrees the court must necessarily exercise.

About the Supreme Court's "purely political role," Mr. Trudeau continued:

...this court was intent on pressing the political players to accept as binding a rule that only politicians can create and that only the political process should sanction.

He noted that the majority judges yielded to politics, but that the minority judges did not. He said:

By refusing to go beyond its role as interpreter of the law, the minority avoided the temptation to which the majority succumbed, that of trying to act as political arbiter at a time of political crisis. While there are no doubt differing views of how well the court performed this role in the Patriation Reference, it is not a role to which a court of law striving to remain above the day-to-day currents of political life should aspire.

Mr. Trudeau said that such is not a role to which a court of law "should aspire." This had been the practice and custom of Canadian jurists. Mr. Trudeau said that, in succumbing to that political role, the majority judges:

...blatantly manipulated the evidence before them so as to arrive at the desired result. They then wrote a judgment which tried to lend a fig-leaf of legality to their pre-conceived conclusion.

Mr. Trudeau warned of the dangers of the court interposing "...itself as a mediator in a political battle...", particularly between a federal government and a provincial government, and the consequences thereof. Mr. Trudeau told us that "...Canada's future would have been more assured" without the Supreme Court's 1981 majority decision.

Mr. Trudeau informed us, sadly, that the Supreme Court's decision had had dire political consequences, one being that it granted Quebec — then governed by a separatist government as it is now — "...a lever to pry itself out of the Canadian constitutional family."

Honourable senators, those were Mr. Trudeau's thoughts.

Mr. Trudeau spoke extensively on constitutional conventions, which are rules made by politicians and are dependent on political institutions. They are not laws to be enforced by the courts. Constitutional conventions are rules regulating the exercise of the discretionary powers of the Crown and Parliament. Mr. Trudeau told us that:

...conventions are enforceable through the political process, the courts should not have engaged even in declaring their existence.

Mr. Trudeau was definitive that constitutional conventions are not the business of the courts and that the courts should leave their creation, modification and enforcement, "...to the politicians, who...are in sole charge of conventions".

Judicial independence is one such constitutional convention that is central to Bill C-42. Judicial independence is that rule of politicians that protects the judiciary from political interference in judges' decision-making processes. Bill C-42's clause 3 raises a spectre over judicial independence in general and, at this time, over the Supreme Court of Canada in particular. Chief Justice Antonio Lamer, in the 1991 case *R. v. Lippe*, stated:

...judicial independence is but a 'means' to this 'end'...judicial independence is critical to the public's perception of impartiality.

Honourable senators, I move now to Bill C-42, clause 2(3) and clause 6, known as the Strayer amendment. Bill C-42 creates a Canadian Judicial Council seat for Justice Barry Strayer of the Federal Court of Canada, who is also Chief Justice of the Court Martial Appeals Court, and provides him with an additional \$5,000 tax free unaccountable hospitality allowance as enjoyed by the judicial council members.

Honourable senators, I inquired about the sources of the Strayer amendments. Mr. Harold Sandell, legal counsel, informed my office that Justice Strayer and the Chief Justice Antonio Lamer both wrote to the Minister of Justice requesting Justice Strayer's addition to the judicial council with the representational allowance. Since the opinion of Chief Justice

Lamer was secured, I wonder why the opinion of Justice Strayer's own Chief Justice, Mr. Justice Julius Isaac, was not sought. The senate committee was told that Justice Strayer spent three months in Hong Kong performing a non-judicial function from October 1 to December 31, 1989, by the authority of Order in Council #1989-1855, of September 21, 1989.

I do not know how true this is, but I am informed that he is currently in Hong Kong again. Mr. Justice Strayer appears to be firmly connected to the executive and legislative functions of government and, honourable senators, I do believe some restraint is needed.

Honourable senators, I wish to relate an historical experience of the Senate. In May-June 1989, Justice Strayer of the Federal Court of Canada Trial Division judged the case of *Southam Incorporated and Charles Rusnell v. the Attorney-General of Canada, the Senate, Senate Standing Committee on Internal Economy, Budgets and Administration, Her Majesty the Queen*. The particular issue was the right and power of a Senate committee to control its own proceedings. The Senate Internal Economy Committee had declined to admit Southam's *Ottawa Citizen* news reporter, Charles Rusnell, to the committee's *in camera* meeting. Mr. Rusnell disliked that and sued the Senate and the Senate committee. The issue before Mr. Justice Strayer was whether the Federal Court had jurisdiction to review, in Justice Strayer's words, "...the manner of exercise of parliamentary privileges" in the Senate by the Senate's committees and by senators. Justice Strayer ruled that the Federal Court of Canada had such jurisdiction. Further, concluding that since both the Senate and the Senate committee were not themselves sueable entities, he ruled that the individual senators were and, consequently, that individual senators, as members of the Senate committee, should be sued privately to provide a newspaper reporter with a remedy against individual senators. Justice Strayer ruled that Southam and Charles Rusnell "...should be entitled to sue the individual members of the Senate Committee...". I repeat that the newspapers could sue "those senators who were members of the committee at the time in question." Justice Strayer, in granting this remedy to reporter Charles Rusnell, said that the senators were:

...seemingly taking pride in the fact that the meetings of this Committee are always held *in camera* and it is fair to assume that, in the absence of some judicial determination inconsistent with that practice, such will continue.

• (1540)

Justice Strayer justified his expansion of the court's jurisdiction and his reach into the Senate, saying:

... the adoption of the Charter has fundamentally altered the nature of the Canadian Constitution.... Thus our Constitution...is no longer "similar in principle to that of the United Kingdom."

Honourable Senators, on appeal, Mr. Justice Frank Iacobucci of the Federal Court, Appeal Division, on August 23, 1990, overruled Justice Strayer's judgment saying:

Strayer J. was of the opinion that courts had such a jurisdiction...the sweep of Strayer J....is rather wide.

He overruled Justice Strayer's reach into the Senate's exercise of its own privileges and powers and control of its own proceedings. Justice Iacobucci said:

...the review of parliamentary proceedings is not a matter to be taken lightly given the history of curial deference to Parliament and respect for the legislative branch of government generally.

Prior to Justice Iacobucci's overrule, however, Justice Strayer's judgment on parliamentary privilege had already been adopted in the case of *CBC v. Arthur Donahoe*, Speaker of the Nova Scotia House of Assembly. Justice Hilroy Nathanson, Nova Scotia Supreme Court Trial Division ruled in the *New Brunswick Broadcasting Co. Ltd. et al. v. Donahoe et al* case on May 25, 1990 against parliamentary privilege. This too, was mercifully later overruled. Parliament's privileges were upheld. At that time, in 1989, many honourable senators, like myself, viewed Justice Strayer's reach as a serious breach of Parliament's privileges and a contempt of Parliament. Senators' wise counsel, restraint, and magnanimity prevailed such that no parliamentary contempt action was initiated against Justice Strayer. The members of the senate committee whom Justice Strayer ruled could be sued included then Senate Speaker, Senator Guy Charbonneau and Senator Roméo LeBlanc, now Governor General of Canada, whose Royal Assent Bill C-42 now seeks.

Honourable senators, consideration of Bill C-42 has revealed the phenomenon of judicial self-activated legislation, which is a threat to judicial independence. The Canadian public expects that its judiciary restrain from political activity. Judicial independence provides that judges not trench on the decision-making process of Parliament. This convention is supported by the political doctrine of institutional comity, which compels that the Constitution's institutions, being the executive, Parliament, and the judiciary, must work in harmony and in comity. Such breaches to constitutional comity are troubling and harmful to the administration of justice in Canada, and particularly to the constitutional convention, judicial independence. Bill C-42 undermines judicial independence and judicial impartiality. Parliament must protect the public, the judiciary, and judicial independence, and especially the supremacy of Parliament.

I am pleased, honourable senators, that the government has yielded on Bill C-42. I wish the government had amended some other clauses. It would have made me very happy. However, as Senator Lynch-Staunton said, the point has been made. The point has been made very strenuously that the Department of Justice

must not send any more so-called technical housekeeping bills here which they expect to be passed without due Senate consideration.

**The Hon. the Speaker:** Does any other honourable senator wish to speak?

It was moved by the Honourable Senator Bryden, seconded by the Honourable Senator Stollery, that this bill be read the third time as amended. Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read third time and passed, as amended.

## FOREIGN EXTRATERRITORIAL MEASURES ACT

### BILL TO AMEND—THIRD READING

**Hon. Lise Bacon** moved the third reading of Bill C-54, to amend the Foreign Extraterritorial Act.

Motion agreed to and bill read third time and passed.

[Translation]

## CANADA LABOUR CODE

### BILL TO AMEND — SECOND READING

On the Order:

Resuming debate on the motion of the honourable Senator Bosa, seconded by the honourable Senator Adams, for the second reading of Bill C-35, an act to amend the Canada Labour Code (minimum wage).

**Hon. Thérèse Lavoie-Roux:** Honourable senators, allow me to take a minute of your precious time to share a few thoughts on Bill C-35, an act to amend the Canada Labour Code (minimum wage), at second reading.

This is a simple housekeeping bill that will align the federal minimum wage rate with the general minimum wage rates established from time to time by the provinces and the territories. Cabinet would, however, retain the authority to establish a minimum wage rate that can apply to employees on a provincial or territorial basis and that differs from the rate set by a province or territory.

This provision of the bill is somewhat embarrassing, but the clause-by-clause study of the bill will probably provide an opportunity to clarify this provision, which does not seem consistent with the very spirit of the law.

In Canada, most workers are employed by businesses that are subject to the labour codes of their respective provinces. Only a small percentage of the population, representing about 700,000 workers, work in interprovincial or international industries that are subject to federal labour legislation. Take for example the people who work in industries such as air transportation, freight transportation, rail transportation, broadcasting or banking and certain federal Crown corporations.

The federal minimum wage has remained at the same level since 1986, \$4 an hour. I think one can wonder why this rate is the lowest in the country. This bill will ensure it is in line with the minimum wage rate in effect in the province or territory where the work is performed. As a result, the minimum wage rate will be increased by anywhere from 75 cents to \$3, depending on the province. The amendment is based on the principle that provincial minimum wage legislation reflects local market conditions and regional economic realities.

[English]

We agree with the thrust of this bill. I believe that it will affect only a small number of people. There are not many people in the categories I mentioned who are paid minimum wage. If the government really wants to address an issue of far more interest to low income people, it should look at levels of unemployment. It should also look at concrete measures it could implement to alleviate the poverty that many of our fellow citizens face today.

As of September, more than 1.5 million Canadians were officially out of work. Canada's jobless rate jumped to 9.9 per cent in September from 9.4 per cent in August. The number of unemployed soared by 78,000 and the number of jobs fell by 47,000. Over the past year, there have been jobs for fewer than half of the Canadians entering the labour force. This is a serious problem.

The youth unemployment rate is around 17 per cent. Four hundred and three thousand young Canadians are out of work. Needless to say, the rate is even higher in Quebec. I do not know the rate in Newfoundland and other provinces.

[Translation]

In conclusion, honourable senators, my colleagues and I support Bill C-35. In fact, we are surprised that the issue was not settled sooner. Now that it will be done, I hope the government will target with more energy and determination the issue of job creation, and that it will not forget the concrete measures needed to fight poverty.

In its most recent report, the Canadian Council on Social Development estimated that one Canadian in six lives in poverty. That amounts to 16 per cent of the country's population, or 4.8 million children and adults. Are we going to be satisfied with this small improvement, which will make it easier to align provincial

and federal minimum wage rates? I come here rather regularly, but I never hear about poverty. Moreover, it has been a long time since we had before us any measure to improve the plight of our poor. Given that there are 4.8 million poor people in a society such as ours, we are certainly justified, beyond the party lines, in asking ourselves certain questions and in trying to convince the government to take action.

We support Bill C-35 as a positive measure, albeit a marginal one in comparison with the much more drastic initiatives to which I just alluded regarding unemployment, job creation and the major problem of poverty that affects too many Canadian families.

[English]

**The Hon. the Speaker:** Honourable senators, does any other honourable senator wish to speak on this matter?

**Hon. Peter Bosa:** Honourable senators —

**The Hon. the Speaker:** If the Honourable Senator Bosa speaks now, his speech will have the effect of closing the debate on second reading of Bill C-35.

**Senator Bosa:** Honourable senators, I am sure all of us agreed with the remarks made by Senator Lavoie-Roux when she spoke about employment, the creation of jobs, the plight of the unemployed and, in particular, unemployed youth. However, this bill is very specific and is designed to increase the minimum wage rate.

Having said that, I move that this bill be referred to the Standing Senate Committee on Social Affairs, Science and Technology.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Bosa, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

[Translation]

## TRANSPORTATION SAFETY AND SECURITY

REPORT OF TRANSPORT AND COMMUNICATIONS COMMITTEE  
REQUESTING AUTHORIZATION TO TRAVEL FOR PURPOSE OF  
PURSUING STUDY ADOPTED

The Senate proceeded to consideration of the sixth report of the Standing Senate Committee on Transport and Communications, presented to the Senate on November 7, 1996.

**Hon. Lise Bacon:** Honourable senators, at the beginning of the session I presented the sixth report of the Senate Transport and Communications Committee requesting authorization to incur special expenses in accordance with the directives governing the funding of Senate committees. I now ask that this report be adopted.

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

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

[English]

## NEWFOUNDLAND

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

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 sub-amendment 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. Michael Kirby:** Honourable senators, I rise today to continue the debate on the proposed amendment to Term 17 of the Terms of Union of Newfoundland with Canada.

Let me say at the outset of these remarks that my interest in this issue is both deep and intensely personal. My mother and father were both born and educated in Newfoundland. Virtually all of my relatives still live in Newfoundland. In fact, among my many family members who are Newfoundlanders are my Uncle Lorne Kirby, who was until recently the principal of the high school in Harbour Grace, and my Uncle Fred Kirby, who served as secretary to the 1967 Royal Commission on Education and Youth in Newfoundland.

That royal commission strongly recommended that the Department of Education in Newfoundland be reorganized on a functional rather than a denominational basis. Indeed, the integrated school system, which currently combines the Anglican, Presbyterian, United Church and Salvation Army schools, came about as a direct result of the royal commission to which my Uncle Fred was secretary.

I make note of this personal history today because I want the record to reflect that I know, from my own family history, how long the education debate has been going on in Newfoundland.

I also want to note in passing my personal involvement in the issue of constitutional change in this country. During 1980 and 1981, I was the senior public servant in charge of the constitutional negotiations that saw our Constitution patriated and the Canadian Charter of Rights and Freedoms included in the Constitution. If I did not understand what a constitutional right was before I had that job, I certainly did afterwards, particularly as it applies to minority rights in the education field. My education in that period also taught me the arguments for and against the concept of “where numbers warrant” in the context of an educational right.

Honourable senators, it is against this personal background of long-time involvement in Newfoundland, in the Constitution, and in the issue of minority rights that I make my comments today.

I have followed the debate in this chamber with great interest. Stripped of political rhetoric and side issues, the proponents of the proposed Term 17 have made five arguments in favour of their position: The first is that the Newfoundland school system is in need of reform; the second is that the needed reform can only come about as a result of the proposed constitutional amendment; the third is that because the legislature of Newfoundland voted for this amendment to Term 17, and because this amendment affects an area of provincial jurisdiction, namely, education, the Parliament of Canada has no choice but to rubber-stamp this proposal; the fourth is that because the majority of Newfoundlanders voted for this amendment in a referendum, the Parliament of Canada should rubber-stamp the proposal; the fifth argument is that because the procedure leading to the process was fair, in that minorities who would be affected by the amendment had a chance to be heard before the amendment was finalized, Parliament should, therefore, pass the proposed amendment to Term 17.

Honourable senators, virtually every proponent of the proposed amendment to Term 17 has made at least two or three of the five arguments that I have outlined. I would like to deal with each of these five arguments in succession. After that, I want to say a few words about Senator Doody's "where numbers warrant" amendment.

Honourable senators will not be surprised when I say that it will take me more than 15 minutes to make my case. I hope, therefore, that senators will allow me to complete my remarks because I believe this is a very important issue, not only to this chamber and to Newfoundland, but also, as I will explain in my remarks, to all Canadians.

I wish now to deal with the first argument, namely, that the Newfoundland school system needs to be reformed. I believe it is patently false and misleading to say that the Newfoundland school system needs reform because it is failing its students. Some proponents of the amended Term 17 would have this chamber believe that this issue has arisen because the Newfoundland school system is antiquated and unresponsive to the modern demands of education. In other words, supporters of the proposed amendment argue that the Newfoundland school system needs to be structured in exactly the same way that the school system in most other provinces is structured, in order for Newfoundland school children to be properly educated. The assumption underlying that argument is that the education systems in other provinces are models upon which Newfoundland should base its own school system.

• (1600)

While I concede the fact that a structure like that of the Newfoundland school system does not exist in any other province, I reject the implicit notion in this argument that because the Newfoundland school system is different, it does not work. Newfoundland produces — and has produced — some of the finest students in Canada. Indeed, I taught many of them myself during the years that I was a professor at Dalhousie University.

While it is entirely justifiable to debate the efficiency of the school system in Newfoundland, it is clearly a mistake to be drawn into questions about the quality of Newfoundland schools. As Senator Doody said in this chamber, addressing this precise point:

I do not hear the parents complaining about the quality of education in Newfoundland.

I agree with him.

Senator Doody's opinion is certainly reflected in the correspondence I have received on this issue. None of that correspondence has focused on the quality of the Newfoundland

school system; rather, the issue in all of the correspondence I have received has been on the question of minority rights.

Indeed, honourable senators, even those in this chamber who support the proposed amendment to Term 17 seem to agree that the quality of the Newfoundland school system is not the principal reason for the proposed amendment. Supporters of the proposed amendment move on quickly from this point to discuss the question of the efficiency of the school system. They make the argument that the Newfoundland school system is costly, wasteful and inefficient. Newfoundlanders, they say, can no longer afford it.

Indeed, Senator Rompkey, in his speeches to this chamber, has forcefully set out some of the inefficiencies that the current school system in Newfoundland faces. As a former principal and administrator in his home province, he knows better than any of us in this chamber about the challenges facing Newfoundland.

In addition, I want to say that Senator Rompkey is very persuasive on this subject. Indeed, honourable senators, I agree with much of what he has had to say about the inefficiency of the Newfoundland school system. I agree that the school system should be more efficient.

In fact, I think it is safe to say that Senator Rompkey's skilful arguments on this particular topic, on this narrow aspect of the first of these five points, have resonance with every member in this chamber. There is no doubt that education is one of the keys to Canada's future success. There is also no doubt that our educational systems need to be as efficient as possible to help today's young people meet the demands placed on them by a modern society.

However, it does not flow from this argument that our school systems must be the same from province to province. I am not persuaded by any of the arguments advanced either before the Standing Senate Committee on Legal and Constitutional Affairs or in this chamber that say that Newfoundland, by the proposed amendment to Term 17, only wants what the rest of the country already has in an education system, and that Newfoundland needs — indeed, must have — what other provinces have. That argument, honourable senators, is irrelevant at best and misleading at worst.

The Newfoundland school system may need reform, but what Newfoundland needs has nothing to do with the education system in any other province. Education systems do not have to be identical to be equally good and efficient. Indeed, honourable senators, in this country, we do not have identical education systems in any two provinces. One only needs to think of the simple fact that Ontario is the only province with a Grade 13 and that the school system in Quebec, where I went through elementary to high school, is also significantly different from the school system in any other province.

Therefore, honourable senators, while I agree with the first argument made by the supporters of the proposed amendment to Term 17 — namely, that efficiency is desirable, and hence reform of the Newfoundland school system is needed — I do not agree with much of the reasoning by which they arrived at that conclusion.

Honourable senators, in my opening remarks, I said that supporters of the amendment had made five points. I have conceded to them that their first point, that reform is desirable, is correct. I will now move on to the other four points they make and show why, in each and every case, they are categorically wrong.

Let me move to the second argument that proponents of the proposed Term 17 have made, namely, that reform can only be achieved through a constitutional amendment. I ask you, honourable senators, if this is, in fact, true? I suggest to you that it is categorically not true.

On October 5 of this year, in this chamber, Senator Doody referred to the Williams Royal Commission of 1992 in Newfoundland. That royal commission took approximately 1,041 written and oral submissions representing 3,677 individuals and 384 groups throughout Newfoundland. There were 128 petitions submitted to the commission with 8,728 names. Senator Doody laid out all these facts in his speech, and none of them were disputed, either in this chamber or in the hearings of the Standing Senate Committee on Legal and Constitutional Affairs on this subject this summer.

Senator Doody also laid out the fact that the Williams Royal Commission had recommended a number of major reforms of the school system. What supporters of the proposed amendment to Term 17 carefully try to ignore, gloss over and otherwise not comment on, is that 90 per cent of what the Williams commission recommended has already been agreed to by the religious denominations involved in the Newfoundland school system. This point has been acknowledged in the hearings of the Standing Senate Committee on Legal and Constitutional Affairs, and by the Minister of Education in Newfoundland.

The fact that a constitutional amendment is being insisted upon here, however, says to us that reform is not possible through any other means. That is simply not true. The degree of acquiescence and support there has been for the recommendations of the Williams commission clearly establishes that that is not the case.

It is abundantly clear that significant progress continues to be made toward reforming the Newfoundland school system and making it more efficient. The stakeholders in this process have indicated their clear willingness to cooperate with each other; yet proponents of the proposed amendment continue to insist that the amendment must be made.

Surely, honourable senators, we have the right to ask why. When the Newfoundland government can get at least 90 per cent of what it wants through negotiation, what element of the final 10 per cent of the recommendations of the Williams commission is so important that it requires a constitutional amendment to achieve it? No supporter of the proposed amendment, either in this chamber, in the other place, or in hearings before the Senate committee, has answered this question.

Supporters of the amendment continue to duck and avoid answering directly and clearly the question of why a constitutional amendment is needed, if virtually everything that the Williams commission recommended has already been achieved through negotiations.

Honourable senators, I am not alone in asking this question. Senator Carstairs, in an eloquent speech in this chamber on October 1, asked this question. Senator Doody also put forward this question. Before the Standing Senate Committee on Legal and Constitutional Affairs, Colin Irving, a constitutional expert, voiced his opinion that not only was a constitutional amendment unnecessary in this case, but that the proposed amendment, in his opinion, could not withstand a constitutional challenge in our courts.

Honourable senators, this is very serious business. This chamber is being asked to support a constitutional amendment that will affect rights given to minorities, rights that those minorities believe should be protected and, indeed, are currently protected in the constitution. We are being asked to support an amendment that affects these rights without any proof being given of the absolute necessity of taking away minority rights.

I say to supporters of the proposed amendment to Term 17: Where is the proof that a constitutional amendment is needed? Where is the proof that this is the only way to achieve your desired objective? No supporter of the proposed amendment to Term 17 has made an irrefutable case that a constitutional amendment is the only way to achieve the objective of making the school system of Newfoundland more efficient.

Section 1 of the Canadian Charter of Rights and Freedoms sets out the test that rights can be constrained by:

...reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

No such test is being made here by the proponents of the proposed amendment. No proof that this constitutional amendment is needed has been put forward.

Therefore, honourable senators, I reject the claim that the desired reform of the Newfoundland school system can only be achieved through a constitutional amendment. Indeed, the evidence clearly suggests that almost everything that is needed to reform the school system can be achieved without a constitutional amendment.

This brings me to the third argument made by supporters of the proposed amendment. That argument says that because the legislature of Newfoundland has voted for the amendment, and because it affects education which is an area of provincial jurisdiction, the Parliament of Canada has an obligation to rubber-stamp this proposal. This argument completely begs the question of what it means for a minority right to be in the Constitution.

**The Hon. the Speaker:** Honourable senators, the time has expired for Senator Kirby's speech. Is leave granted for him to continue?

**Hon. Senators:** Agreed.

**Senator Kirby:** The third argument essentially is that this chamber, and, indeed, the Parliament of Canada, should rubber-stamp the position of the legislature of Newfoundland. I repeat that this position completely begs the question of what it means for a minority right to be in the Constitution. If, as argued by proponents of the proposed amendment, a term in the Constitution can be changed in effect solely by a provincial legislature, then why put the term in the Constitution in the first place?

In 1949, by the conditions set out in Term 17, Newfoundland put into the Constitution something no other province had. These conditions were a very important part of the discussion leading to Newfoundland's joining Confederation. Term 17, as it was then and as it stands now, reflects an important part of the cultural fabric of Newfoundland. Its significance in this regard has not diminished.

Further, Term 17 was put into the Constitution for a very specific reason, namely, to put its conditions beyond the reach of the provincial legislature. In 1949, Newfoundlanders wanted the protection of the Government of Canada against any attempt by the Newfoundland legislature to erase their long-held educational rights.

Now, in 1996, this Parliament is being told by the proponents of the proposed amendment to Term 17 that we should just ignore history; that because education is an area of exclusive provincial jurisdiction, changing education should be Newfoundland's business alone. We are being told that the protection of the Parliament of Canada, which Newfoundlanders wanted — and got — in 1949, is worthless in 1996; that our role is solely to rubber-stamp this proposal because the legislature of Newfoundland wants it. I categorically reject this interpretation of what it means for a right to be protected in the Constitution.

If the role of the Senate is solely to rubber-stamp a proposal from a provincial legislature, why is the Parliament of Canada involved at all? The Newfoundland legislature presumably, under that scenario, as a logical consequence of their position, need simply write us a letter, telling us that they have changed the

Constitution. Would that be acceptable to us as senators? My answer is no.

In 1867, this institution, the Senate of Canada, was set up specifically to safeguard minority and provincial rights. The issue in this debate is about minority rights. It is, even more important, about the removal of vested, constitutional, minority rights. We have a role to play in this issue.

Section 93 of our 1867 Constitution, which is essentially the equivalent of Term 17 for Newfoundland, was put into our Constitution specifically to protect minorities. There is no doubt about that fact. One only need read the debates of the time. In 1867, the Roman Catholic minority in Ontario was looking at a Protestant majority. Section 93 was put into the Constitution so that Ontario Roman Catholics would be empowered to set up their own separate school system.

In 1867, Ontario Roman Catholics could obviously have been given the same power via a provincial statute. Provincial statutes, however, are subject to change solely by the provincial legislature. Thus, Roman Catholics in Ontario in 1867 wanted the protection of the Parliament of Canada. Instead of being a provincial statute, section 93 was put into the Constitution specifically to take the power to change the system out of the hands of the provincial legislature. The same can be said of section 22 of the Manitoba Act, section 17 of the Saskatchewan and Alberta Acts, and Newfoundland's Term 17.

To get around these facts, to avoid having to deal with the fact that Term 17 was put into the Constitution explicitly to prevent the provincial legislature in Newfoundland from being able to unilaterally take away minority rights, proponents of the amendment to Term 17 have made the argument that minority rights are not, in fact, being affected in this case. They argue that a strong constitutional guarantee continues to exist for minorities to operate their own schools under the proposed amendment to Term 17. They point to the language of the proposed amendment that says schools established and maintained and operated with public funds shall be denominational schools.

Further, supporters of the proposed amendment to Term 17 gloss over as lightly as they can, the fact that the right to a publicly funded denominational school under proposed new Term 17 comes under the words:

...subject to provincial legislation that is uniformly applicable to all schools specifying conditions for the establishment or continued operation of schools.

The key words in that clause are "subject to provincial legislation." What does this mean? It means that the grant of a constitutional right to establish a denominational school under the new proposed Term 17 would be subject to laws established by the provincial legislature.

In other words, it would clearly be possible under the proposed amendment to Term 17 for a future Newfoundland government to pass legislation making it practically impossible to have a denominational school. There would be no recourse to the courts for the minorities protected currently by Term 17. The rights granted them in 1949 would be, in effect, extinguished. In essence, the constitutional guarantee given to them at the time of the union of Newfoundland with Canada would cease to exist.

The courts could only say to the aggrieved minority that, yes, they do have the right to establish their own schools, but it is subject to provincial legislation. The only inquiry after that is whether the provincial legislation in question is uniformly applicable to all schools. In the case that it is, the courts could not help the aggrieved minority.

Proponents of the proposed amendment to Term 17 have a duty that, in my view, they have absolutely failed to fulfil thus far. They have a duty to inform this chamber about their view of what it means to hold a right that is subject to constitutional protection.

We need to understand from people who want to pass this amendment what they think it means to have a right explicitly set out in the Constitution; to have a minority right protected by the Constitution. Does it or does it not mean that the right is beyond the reach of provincial legislators and politicians? Or does it mean, as supporters of the amendment would implicitly suggest, that the right in question is subject to the whims of the provincial government of the day?

Are constitutional rights of any permanence, or do minorities only possess them at the pleasure of the current provincial legislature?

Let me give you my clear views on those questions. I believe that a basic purpose of a constitution should be to establish and protect rights, not diminish them. That is an axiom that any first year law student knows, and I might say, although I am not a lawyer, I frequently lecture to law school students on the subject of the Constitution, and I have never had either them or their professors disagree basically with that position. While it is absolutely true to say that no rights exist in isolation from other rights, we look to the courts, not to politicians in a provincial legislature or in the Parliament of Canada, to define or balance them. We do not look to a provincial legislature or to the Parliament of Canada, acting alone or unilaterally, to define existing rights.

I can only conclude that the intention of the Newfoundland legislature in keeping, or in acquiring unto itself, the power under the proposed Term 17 amendment to unilaterally change the school system is that at some point in time in the future, the legislature may decide to exercise that power. Otherwise, why do they want it?

I want to be very careful that I am not implying any ill will on the part of the current Newfoundland government or legislature. I am only emphasizing the assumption that clearly lies behind all exercises in constitution-making: namely, that those who have a power may, at some point in time in the future, decide to use it. Otherwise, they do not need it. If, in fact, they never intend to use it and, therefore, do not need it, I, for one, do not understand why the proponents of the proposed amendment to Term 17 have been pushing for it as hard as they have.

For us in this chamber to vote in favour of the proposed Term 17 simply because the legislature of Newfoundland wants it, would, honourable senators, in my view, be a very clear and gross abrogation of our duties as senators. We have an important part to play in this process, and I, for one, am not willing simply to rubber-stamp this proposal just because the Newfoundland legislature wants it.

Therefore, I reject the third argument made by proponents of the proposed amendment to Term 17, that we as senators, and indeed the entire Parliament of Canada, should only have a rubber-stamp role to play with respect to protecting the rights of minorities in Newfoundland that are now in the Canadian Constitution.

This leads me to the proponents' fourth argument: That not just the elected representatives of the Newfoundland legislature want the proposed amendment to Term 17, but the people of Newfoundland do as well. They voted for it in a referendum, proponents of the proposed amendment say, and this Parliament has no business thwarting the will of the people of Newfoundland. Honourable senators, this is a powerful argument. Constitutions and constitutional law exist clearly to serve citizens, not governments. There can be no doubt about that.

However, this is a case where minority rights are being affected, and we therefore have to ask ourselves what the meaning of a minority right is. Clearly, if a minority right exists only at the discretion of the majority, then it is not a right at all. It is, instead, merely a privilege — a privilege bestowed on a minority by a majority; a privilege that can be taken away whenever the majority chooses.

Honourable senators, are we dealing with rights or privileges in the case before us today? History would indicate very clearly that we are dealing with rights.

In 1949, when Newfoundland joined Canada, the people of Newfoundland and Labrador felt that they had the right to have their children educated in schools that reflected their ethics, their values and their disparate cultures. By agreement with the Government of Canada, that right of the people of Newfoundland was enshrined in our Constitution. It was put there precisely to protect it from being taken away by provincial legislators acting alone.

If this chamber passes the proposed amendment, those groups who negotiated for, and were granted, rights in 1949 will, in effect, be told by the government of Newfoundland, the legislature of Newfoundland and the Parliament of Canada, that Term 17 was not, as the minorities thought, safe for all time but, rather, was an administrative arrangement subject to change by a majority voting in a referendum. These groups, in effect, will be told by the members of this chamber and this Parliament that what they negotiated in 1949 was a privilege, not a right.

Let me be clear: I would be making quite a different speech this afternoon if all of the groups whose rights were protected under Term 17 could be shown to be willing to have their rights altered by the proposed amendment, or in any other given way. Clearly, minority rights enshrined in the Constitution can be changed, but only if that change is approved by those whose rights are affected.

Let me ask you: Is this the case in the amendment before us today? I would suggest to you very strongly that it is not. We have absolutely no proof that the minorities affected support the proposed changes. Indeed, the opposite is the case here.

In a provincial referendum, 52 per cent of Newfoundlanders voted on the subject. Of that 52 per cent, 55 per cent voted in favour of the change. Multiplying those two numbers together, as I am inclined to do since I am a mathematician, one can clearly see that what it means is that all we can really be sure about is that 29 per cent of those who voted in this referendum supported the change. Twenty-nine per cent, honourable senators, is not a terribly compelling number.

Further, the correspondence in my office from such groups as the Catholic Education Council, the Pentecostal Education Council, and even the Archbishop of Newfoundland, all of whom oppose the proposed amendment to Term 17, clearly suggests to me that the minorities whose rights will be affected do not support the proposed changes.

It has been argued repeatedly by Senator Rompkey, and others who support the proposed amendment, that the majority of the minorities favour the proposed change, and yet we know without question from the letter writing campaign that the majority of adherents to the Pentecostal Church clearly do not want the change.

The proof we have been offered that the majority of Roman Catholics want the change has been at best anecdotal. For example, Mr. Loyola Sullivan, the Leader of the Opposition in Newfoundland, the leader of the Conservative Party in Newfoundland, testified before the Standing Senate Committee on Legal and Constitutional Affairs that his riding is approximately 90 per cent Roman Catholic, and yet he had received only two or three calls on this issue in the last three years. Senator Rompkey, in this chamber on September 26, stated

that he had spoken with Roman Catholics in his province who disagreed with the church's official position.

To be fair to both of these gentlemen, neither of them offered their anecdotal evidence as conclusive proof. A good thing, because anecdotal evidence is not proof. It would not stand up in a court of law, and it should not stand up here.

Surely — and this is the key point with respect to the outcome of the provincial referendum — the onus of proof is on those who want to take away minority rights, not on those who want to keep them. The onus of proof of establishing, in a crystal clear fashion, that the minorities are prepared to accept the proposed change that would weaken their constitutional rights rests with those who want to change them. The minorities being considered in this case have the rights. They do not need to prove anything.

Without clear, irrefutable evidence that the majority of the minorities affected by the proposed change actually support it, we in this chamber should not — and indeed must not — vote for this proposed amendment.

A minority right means that it continues to exist, even when the majority does not want it to exist. If our Constitution was only about majority rule, if rights were simply a matter of majority rules, then frankly, none of us in this chamber would be needed. All we would need is a series of national or provincial referenda on whatever the major political questions of the day happen to be.

The reality is that this process is not how change is made in this country. We have a Constitution so that, at the end of the day, the majority simply cannot force a vote and steamroller over the rights of the minority. That is precisely what is actually meant by having something in the Constitution, and out of the reach of the provincial legislature and a majority of people in the province.

• (1630)

Therefore, honourable senators, the argument that the proposed amendment should be supported simply because a majority voted for it in a referendum must be rejected. To accept that referendum, to accept that argument, is to accept the principle that all the rights in the Constitution, whether they are related to Term 17 or the Terms of Union with Newfoundland or any other right, are not rights at all but merely privileges.

As someone who spent seven days a week for 18 months in the 1980-81 period negotiating the elements of the Charter of Rights and Freedoms, I can tell you absolutely categorically that those rights are there precisely to protect minorities at times when it is not convenient, when it is not desirable, and when for whatever reason the majority decides that it did not want those rights. They were put in the Charter of Rights and Freedoms precisely to put them beyond reach of any small group of politicians or any majority acting unilaterally at any given time.

This brings me, honourable senators, to the fifth and final argument that proponents of the proposed amendment to Term 17 make. This argument is really quite deceptive and intriguing because it allows them to duck all of the other issues associated with this amendment.

The fifth argument says that given that the Newfoundland school system needs reform and that the process leading to the amendment was fair, in that the affected minorities had a chance to be heard before the content of the amendment was finalized, Parliament should go ahead and give effect to the proposed new Term 17. Indeed, in his testimony before the Standing Senate Committee on Legal and Constitutional Affairs, the Minister of Justice emphasized this point. He stated that it was important to note:

The process by which the amendment came forward from the province was fair.

Much attention was paid to this particular quote and to the process issue in the majority report of the Legal and Constitutional Affairs Committee when it reported on its hearings into this issue. Indeed, that majority report, which one could dissect in a number of other ways, went to some length to quote two constitutional experts, one a Dr. Kathy Brock of Wilfrid Laurier University, who said in essence that minority rights can be changed without the consent of the minority if the damage done to minority rights is offset by the gain to society as a whole.

That is a fairly intriguing notion to say the least. It is hard to understand under that concept what a minority right really is. Dr. Brock is quoted in the majority report as saying:

...you must balance minority rights against the rights of parents to have control over where their children go to school.

That is not relevant to the issue at hand. Clearly it is not, but the essence of the rest of that section of the majority report was clearly aimed at simply establishing that it is okay to take away minority rights provided that you do not hurt them too badly. In other words, one has to measure the degree of pain inflicted on the minority as you take away their rights and decide, as opposed to them deciding, whether that pain is acceptable.

The majority report goes on to quote Dr. Anne Bayefsky of the University of Ottawa, another constitutional expert, when she expresses her view that under the proposed amendment to Term 17 minorities in Newfoundland would, "retain a great deal more power and control than would be the case in a lot of other provinces."

That is another interesting argument, honourable senators, because in essence what that argument says is that it is okay to

reduce someone's rights if what you do is leave them better off than other people. Again, what does that say about what a minority right really constitutes?

In essence, the argument that the majority tried to make on this process issue of fairness in the majority report is as follows: one, Newfoundland needs a new school system; two, the minorities had a chance to be heard; three, in the end, nobody is losing very much; and, four, therefore reform can take place. In other words, so long as the process is fair, the end justifies the means.

Honourable senators, however compelling the case may be for reform of the Newfoundland school system, I cannot lend my support to this unbelievably dangerous precedent in interpreting constitutional rights. If constitutional rights, collective or individual, were merely a matter of demonstrated need and procedural fairness, there would be no need to tie up the courts in interpreting their scope and application. Constitutional change would merely be a matter of empirical proof.

In this context, this chamber's role as a protector of minority rights would become easy under the amending formula. We would only need to look at the need and the fairness of the process. We would look at the numbers. It would be that simple.

Honourable senators, I have read the majority report on many occasions, and that is essentially the unbelievably simplistic argument that the majority report makes. In effect, it is that simple and, frankly, it is very misguided.

The fairness issue is a total red herring because it misses the point on two key issues. First, fairness is a purely subjective term. Clearly, what is fair to one person may not be fair to another. Second, and more important, removing a minority right is not about process — it is about an outcome. The process by which a minority right is removed cannot justify the removal of that right without the clearly established support of those whose rights are being changed.

To try to defend, as supporters of the proposed amendment to Term 17 have done, what they are doing on the ground that they gave everyone an opportunity to be heard and then went ahead and did what they were going to do anyway, honourable senators, completely ignores the issue of what a minority right is.

Frankly, it is a very insulting argument in the sense that it supposes that any process that gives everyone a right to be heard is regarded by supporters of the proposed amendment as a fair and equitable way to amend the Constitution. Minorities do not stand much of a chance under this formula. Convince the majority or lose.

Therefore, honourable senators, I reject the fifth argument that proponents of this amendment to Term 17 have made, the argument based on the process itself.

Having dealt with these five arguments, and having shown how the last four of them are not only categorically wrong but would form very dangerous precedents for this chamber to support, let me turn now for a moment to Senator Doody's "where numbers warrant" amendment.

I am in agreement with Senator Doody that ideally this chamber should not support any amendment to Term 17. I believe that modernization of the school system should and indeed can be achieved through negotiation. The evidence I gave earlier about 90 per cent of the recommendations of the Williams Royal Commission having been agreed to and achieved through negotiation clearly establishes that no amendment is required. However, if supporters of the proposed amendment both here and in the other place are bound and determined to push ahead with this initiative, let me say at the very least that this chamber must support Senator Doody's amendment by substituting "where numbers warrant" for the phrase "subject to provincial legislation."

Why do I say that? I say that because the "where numbers warrant" amendment has the effect of making the courts, not the Newfoundland legislature, the ultimate guardians of minority rights under the new Term 17. It would at least assure the minorities in Newfoundland of an independent, neutral, third party protection of their rights. This is what they thought they were getting when they put it in the Constitution and it is what many members of this chamber now seem to be prepared to throw away cavalierly. If indeed we are going to throw it away, at the very least we have to replace that third party protection by another source, in which case one ought to adopt Senator Doody's "where numbers warrant" amendment. It, at least, gives the courts the opportunity to be that third party adjudicator of minority rights, as intended by our Constitution.

Honourable senators, this is the key point in this debate. It is not for any legislative body to give minority rights under our Constitution and then years later take those rights away. Rights may evolve and change as they are balanced and defined by the courts over time, but they do not come and go simply because a provincial legislature decides that they are inconvenient.

Accordingly, even in the case where we adopt the "where numbers warrant" approach, I believe that an exception should be made for the Seventh-day Adventists who, because of their small numbers, may not be protected by this clause. Because it is a debatable question whether they would be protected by the "where numbers warrant" clause, we should have a grandfather position that would protect the Seventh-day Adventists. Their minority rights are no less deserving of protection by us and by the courts than are the rights of the other groups who almost certainly will meet the "where numbers warrant" test.

• (1640)

The main argument that this chamber has heard against Senator Doody's amendment is that any five or six people could

go to court and demand a school of their own. I agree with the amendment's detractors that this is an alarming prospect. If it came to pass, it would prove detrimental to even the current education system in Newfoundland.

However, it is interesting, honourable senators, that these people who attack Senator Doody's "where numbers warrant" amendment carefully fail to mention that there is no strong tradition in Canada for our courts loosely handing out minority rights. Since the charter came into effect in 1982, we have now had nearly 15 years of experience on this subject. Historically, our courts have been cautious on the subject of interpreting constitutional rights. They have been sensible and practical in their interpretation of what "where numbers warrant" means.

I am confident that, so long as proposed changes to Newfoundland's school system are practical and effective, and do not interfere with the basic right to denominational schools, they would be upheld by the courts.

Opponents of Senator Doody's amendment also failed to point out that, technically, Term 17 protects religious denominations, not individuals. As such, it is not at all clear that individuals would have the right to challenge a "where numbers warrant" amendment in court. Since the churches involved — that is, the denominations involved in this case — have already agreed to 90 per cent of the recommendations of the Williams commission, it would appear to be extremely unlikely that they would challenge Senator Doody's amendment in court.

If they did, however, it makes more sense to deal with the situation then rather than taking away rights now because we are afraid of some court challenge down the road.

I admit that neither I nor anyone else can predict with certainty what a court will do in any given situation. The inclusion of the phrase "where numbers warrant" was the subject of intense discussion during the constitutional negotiations of 1980 and 1981. Those of us involved in those negotiations clearly understood that what we were doing was giving judges, rather than politicians, the ability to decide how to interpret minority rights in a practical way. We were deliberately, consciously, debating the issue with all provincial governments of the day, with the exception of Quebec, and all parties in the Parliament of Canada. A deliberate decision was made to ensure that minority rights under the "where numbers warrant" clause were to be protected and judged by a neutral third party, namely, the courts — not by an individual legislature or the Parliament of Canada.

Many of us who were involved in those negotiations are still active here in the two chambers in this Parliament. We argued passionately then, and I would argue passionately now, to use the term "where numbers warrant." Surely, honourable senators, if that phrase was adequate in 1981, it is adequate in this case.

I would say to members on my own side, who argued passionately for that “where numbers warrant” amendment in 1981: Please explain this to me. If you found that phrase as powerful and compelling as we found it in 1981, what is different now? Tell me why it does not work in Newfoundland, when it works for francophone rights outside Quebec and anglophone rights in Quebec. I say that particularly to the Liberals who argued and supported it. We went through an awful political fight in that 1980-81 period. That “where numbers warrant” amendment was one of those touchstones on which the entire coalescing of our party was built. If that expression was good and effective then, you cannot simply turn your back on it now without explaining why.

There is not a single opponent of Senator Doody’s position who has articulately expressed why they are against the “where numbers warrant” amendment with the exception of Senator Carstairs. She made the point that she was opposed to the “where numbers warrant” amendment because it does not adequately protect the Seventh-day Adventists. As I pointed out previously, I believe that we should enlarge Senator Doody’s amendment to ensure that the Seventh-day Adventists are adequately protected by the amendment.

In conclusion, honourable senators, I want to say that there is no doubt that our Constitution is a living document. If our Constitution is not kept up to date and made responsive to the needs of Canadians, it becomes a straitjacket: inflexible and unworkable. It is not true to say — and I have not suggested whatsoever in any of my remarks today — that rights which were hitherto entrenched are forever entrenched and cannot be altered. Our courts balance competing rights every day. However, in this case, we are being asked to set an incredibly dangerous precedent, a precedent that I believe that we, as senators, must reject vigorously.

No proof has been given to us that this proposed amendment to Term 17 is, in fact, needed. No proof has been given to us that this proposed amendment to Term 17 is supported by the minorities who are currently protected by Term 17. To take away their rights without their consent would set a precedent that could conceivably lead to other provinces seeking similar changes.

Surely, honourable senators, we must take that possibility into account. This institution, this Senate of Canada, was set up in 1867 to protect provincial and minority rights. While we all, no doubt, have great sympathy for the fact that the Newfoundland school system needs reform, there is a much larger question here. That question is the essential one of all democratic societies: How do we balance the interests of the few against the many? That is the only issue here. All other questions of process, fairness, and who voted for what under what circumstance — and even the need for reform — stand in the shadow of the fundamental question: How do we balance the interests of the few against the many?

A minority right exists, even though the majority may be opposed to it. That, honourable senators, is the essence of minority rights. Surely, it is our role in this chamber to reject any attempt by the many to change the rights of the few in the absence of their consent. Therefore, I ask all of my colleagues to join with me and vote against the proposed amendment to Term 17. I ask for your support on the basis that the proposed amendment forms a highly dangerous precedent which we, as senators and as citizens, should reject.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I have a few questions.

In response to my question to Senator Kinsella, which was subsequently amplified by Senator Doody, I raised the question concerning the lack of constitutional protection for those citizens of Newfoundland who do not denominate themselves.

Section 15 of the Constitution, to refresh senators’ memories on the background, refers to equality rights. We have this complicated issue. Perhaps my colleague can help us, based on his tests, as to how we deal with balancing the rights of those citizens in Newfoundland who are not covered by Term 17, which is a distinct minority, and the equality provisions under the Constitution.

**Senator Kirby:** As Senator Grafstein knows, I am not a constitutional lawyer. In any event, the question that he raised is not the question that is before us. The question that is before us is whether we would support this amendment.

In fairness to Senator Grafstein, we discussed some of this matter earlier. He would argue that Term 17 should not have been put into the Constitution in the first place, for reasons that he will explain when he speaks.

• (1650)

However, the fundamental question here has to do with the fact that people now have rights. Specific groups have rights in this case that are clearly set out in our Constitution. I have been very careful not to say that the current system is perfect. I was saying that we have been asked to change the rights of a minority without, first, any evidence being given that change through the Constitution is required or, second, any proof that the minority accepts the change. I believe that that is the only issue on which we should focus when we consider Term 17.

**Senator Grafstein:** I wish clarification on a comment made by Senator Kirby. I am contemplating contributing to this debate. Before I decide whether I will contribute, I want to examine what he has said and what Senator Doody has said in the last few days, because I understand the complexity of the issue.

I suggest that Senator Kirby took my comment to him prior to his speech out of context.

**Senator Kirby:** If I did, I apologize, Senator Grafstein.

**Hon. C. William Doody:** I have a question for Senator Kirby that deals with that thorny question of the Seventh-day Adventists whose rights are affected by this proposed amendment.

Is Senator Kirby aware that the Seventh-day Adventists have written a letter to the Chair of the Standing Committee on Legal and Constitutional Affairs saying that they would much prefer to see the phrase “where numbers warrant” included in the amendment than to leave it as it is? They say in that letter that they would feel much more comfortable pleading their case before the courts than they would trying to plead their position before the Legislative Assembly of Newfoundland.

**Senator Kirby:** Honourable senators, if I did not make my point clear in my remarks, I apologize. I thought I was very clear. I am aware of the position of the Seventh-day Adventists. It is very clear that they prefer the “where numbers warrant” amendment to the proposed amendment. It is not very clear — and none can predict with absolute certainty that they would meet the “where numbers warrant” test before a court of law. Therefore, I was saying that, in order to be totally fair, one would have to, in addition to the “where numbers warrant” amendment, grandfather them as the one special case. They negotiated for their rights and those rights deserve protection.

**Hon. M. Lorne Bonnell:** Honourable senators, minority rights are being destroyed here today. We gave permission for extended time for a speech which I thought would conclude in another minute or two. It went on for another 15 minutes. I think, Your Honour —

**The Hon. the Speaker:** Senator Bonnell, are you raising a point of order or are you speaking on the amendment?

**Senator Bonnell:** I am speaking on the amendment.

I like to think that the minority rights of people can be protected. We give permission out of the goodness of our heart for a time extension to finish a speech. We never thought the speech would go on for 30 more minutes with questions and answers extending well beyond the time limit.

The rule pertaining to this procedure should be examined by the Standing Committee on Privileges, Standing Rules and Orders to ensure that, when senators ask for extended time to finish their speeches, they specify that it will be for one or two minutes, not for 15 or more minutes.

It was a lovely and very interesting speech, but the senator could have adjourned the matter to another day.

**Senator Berntson:** You should not have given him leave.

**Senator Bonnell:** My point is that the *Rules of the Senate* should be changed to say that a senator must ask for an extension

of a specified length, and when time has been extended there should be no opportunity for questions.

**Senator Lynch-Staunton:** Why did you not argue that during the GST debate?

**Senator Doody:** Senator Bonnell has exercised his right to speak in this debate and has spoken to the amendment. I am not sure whether he is in favour of it or against it. In any event, I wonder whether he could find it in his heart to recognize that this matter is of extreme importance. If senators wish to express themselves for a little longer than the usual time, busy though he might be, he might find the time to listen and perhaps learn a little bit about what is going on in other parts of the country.

**Senator Bonnell:** Senator Doody, if anyone cannot say what they have to say on an issue in 20 minutes, they do not know the subject very well.

**Hon. Marcel Prud'homme:** I am a long-time friend of Senator Bonnell's, but I profoundly disagree with his statement. I have been a member of Parliament for 33 years. This is one issue on which one of the two houses has played its role fully. This was a great day for me as I listened to Senator Kirby. Even when we disagree with people, we should be fair enough to say, “It is a great day.”

My only regret as a senator is that we do not have provision to televise debates. If there is any point in this debate which I should have liked to have had televised across Canada, it is the intervention by the Honourable Senator Kirby. People listening to his intervention could reflect on the fundamental issue of what it is to be a Canadian. To be a Canadian is to have feelings for each other and to understand what minority rights are all about. That is the meaning of Canada for me, in French and in English, in Quebec and in the rest of Canada. That is what makes Canada so exceptional.

I owe no favours to Senator Kirby, but it was a privilege to listen to his remarks. I told all the pages, all of whom are university students, that they would hear a good speech. It was a great experience for them to hear Senator Kirby speak, although they may disagree with him.

However, I do not share the opinion that he spoke too long.

As I said, I may participate toward the end of the debate on this matter. I am very happy to see that many senators have stayed to listen to this debate.

When we start touching minority rights, we must consider who will be next. I am looking at some of my long-time friends; Senator Adams, Senator Watt. This is an important debate. I am glad to know that we will have an opportunity to dispose of it, one way or the other. That is exactly what the Senate is all about.

On motion of Senator Grafstein, debate adjourned.

## MOTION FOR ALLOTMENT OF TIME FOR DEBATE ADOPTED

**Hon. B. Alasdair Graham (Deputy Leader of the Government):** Honourable senators, on this particular item, following discussions on both sides, an agreement has been reached with respect to how we will proceed on the motion standing in the name of Senator Rompkey respecting Term 17.

Accordingly, pursuant to rule 38, I move:

That no later than 5:00 p.m. on Wednesday, November 27, 1996, any proceedings before the Senate shall be interrupted and all questions necessary to dispose of the motion by the Honourable Senator Rompkey, 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) shall be put forthwith without further debate or amendment, and that any votes on any of those questions not be further deferred.

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

Motion agreed to.

• (1700)

## STATE OF FINANCIAL SYSTEM

REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE  
REQUESTING AUTHORIZATION TO TRAVEL  
FOR THE PURPOSE OF PURSUING STUDY ADOPTED

The Senate proceeded to consideration of the tenth report of the Standing Senate Committee on Banking, Trade and Commerce (power to travel), presented in the Senate on November 5, 1996.

**Hon. Michael Kirby,** Chairman of the Standing Senate Committee on Banking, Trade and Commerce, moved the adoption of the report.

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

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

## TRANSPORTATION SAFETY AND SECURITY

TRANSPORT AND COMMUNICATIONS COMMITTEE AUTHORIZED TO  
MEET DURING SITTINGS OF THE SENATE

**Hon. B. Alasdair Graham (Deputy Leader of the Government),** for Hon. Lise Bacon, pursuant to notice of Wednesday, November 6, 1996 moved:

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.

Motion agreed to.

## ADJOURNMENT

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

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

That when the Senate adjourns today, it do stand adjourned until Monday, November 25, 1996, at 8 p.m.

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

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Monday, November 25, 1996, at 8 p.m.

**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(2nd Session, 35th Parliament)**  
**Thursday, November 7, 1996**

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

<b>No.</b>	<b>Title</b>	<b>1st</b>	<b>2nd</b>	<b>Committee</b>	<b>Report</b>	<b>Amend.</b>	<b>3rd</b>	<b>R.A.</b>	<b>Chap.</b>
C-2	An Act to amend the Judges Act	96/03/19	96/03/20	Legal & Constitutional Affairs	96/03/21	none	96/03/26	96/03/28	2/96
C-3	An Act to amend the Canada Labour Code (nuclear undertakings) and to make a related amendment to another Act	96/03/27	96/03/28	Social Affairs, Science & Technology	96/05/01	none	96/05/08 referred back to Committee 96/05/16	95/05/29	12/96
C-4	An Act to amend the Standards Council of Canada Act	96/06/18	96/06/20	Banking, Trade & Commerce	96/09/24	none	96/09/25	96/10/22	24/96
C-5	An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act and the Income Tax Act	96/10/24	96/10/31	Banking, Trade & Commerce	96/11/05	none	96/11/06		
C-6	An Act to amend the Yukon Quartz Mining Act and the Yukon Placer Mining Act	96/10/21	96/10/23	Aboriginal Peoples	96/11/05	none	96/11/06		
C-7	An Act to establish the Department of Public Works and to amend and repeal certain Acts	96/03/27	96/03/28	National Finance	96/05/14	none	96/06/12	96/06/20	16/96
C-8	An Act respecting the control of certain drugs, their precursors and other substances and to amend certain other Acts and repeal the Narcotic Control Act in consequence thereof	96/03/19	96/03/21	Legal & Constitutional Affairs	96/06/13	fifteen	96/06/19	96/06/20	19/96
C-9	An Act respecting the Law Commission of Canada	96/03/28	96/04/23	Legal & Constitutional Affairs	96/05/09	none	96/05/14	96/05/29	9/96
C-10	An Act to provide borrowing authority for the fiscal year beginning on April 1, 1996	96/03/26	96/03/27	National Finance	96/03/28	none	96/03/28	96/03/28	3/96
C-11	An Act to establish the Department of Human Resources Development and to amend and repeal certain related Acts	96/04/24	96/04/30	Social Affairs, Science & Technology	96/05/15	none	96/05/16	96/05/29	11/96
C-12	An Act respecting employment insurance in Canada	96/05/14	96/05/30	Social Affairs Science & Technology	96/06/13	none	96/06/20	96/06/20	23/96
C-13	An Act to provide for the establishment and operation of a program to enable certain persons to receive protection in relation to certain inquiries investigations or prosecutions	96/04/23	96/04/30	Legal & Constitutional Affairs	96/05/28	one	96/05/30	96/06/20	15/96

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-14	An Act to continue the National Transportation Agency as the Canadian Transportation Agency, to consolidate and revise the National Transportation Act, 1987 and the Railway Act and to amend or repeal other Acts as a consequence	96/03/27	96/03/28	Transport & Communications	96/05/08	none	96/05/16	96/05/29	10/96
C-15	An Act to amend, enact and repeal certain laws relating to financial institutions	96/04/24	96/04/30	Banking, Trade & Commerce	96/05/01	none	96/05/02	96/05/29	6/96
C-16	An Act to amend the Contraventions Act and to make consequential amendments to other Acts	96/04/23	96/04/25	Legal & Constitutional Affairs	96/05/02	none	96/05/08	96/05/29	7/96
C-18	An Act to establish the Department of Health and to amend and repeal certain Acts	96/04/24	96/04/30	Social Affairs, Science & Technology	96/05/08	none	96/05/09	96/05/29	8/96
C-19	An Act to implement the Agreement on Internal Trade	96/05/14	96/05/30	Banking, Trade & Commerce	96/06/11	none	96/06/12	96/06/20	17/96
C-20	An Act respecting the commercialization of civil air navigation services	96/06/05	96/06/10	Transport & Communications	96/06/19	one	96/06/19	96/06/20	20/96
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 1996	96/03/21	96/03/26	—	—	—	96/03/27	96/03/28	4/96
C-22	An Act granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 1997	96/03/21	96/03/26	—	—	—	96/03/27	96/03/28	5/96
C-26	An Act respecting the oceans of Canada	96/10/21	96/10/23	Fisheries					
C-28	An Act respecting certain agreements concerning the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport	96/04/23	96/05/30	Legal & Constitutional Affairs	96/06/10	seven	defeated 96/06/19	defeated 96/06/19	
C-31	An Act to implement certain provisions of the budget tabled in Parliament on March 6, 1996	96/05/28	96/05/30	National Finance	96/06/13	none	96/06/18	96/06/20	18/96
C-33	An Act to amend the Canadian Human Rights Act	96/05/14	96/05/16	Legal & Constitutional Affairs	96/05/28	none	96/06/05	96/06/20	14/96
C-35	An Act to amend the Canada Labour Code (minimum wage)	96/10/31	96/11/07	Social Affairs, Science & Technology					
C-36	An Act to amend the Income Tax Act, the Excise Act, the Excise Tax Act, the Office of the Superintendent of Financial Institutions Act, the Old Age Security Act and the Canada Shipping Act	96/06/18	96/06/19	Banking, Trade & Commerce	96/06/20	none	96/06/20	96/06/20	21/96
C-42	An Act to amend the Judges Act and to make consequential amendments to another Act	96/06/18	96/10/02	Legal & Constitutional Affairs	96/10/21	none	96/11/07 (2 amend.)		
C-45	An Act to amend the Criminal Code (judicial review of parole ineligibility) and another Act	96/10/03	96/10/22	Legal & Constitutional Affairs					
C-48	An Act to amend the Federal Court Act, the Judges Act and the Tax Court of Canada Act	96/06/18	96/06/20	—	—	—	96/06/20	96/06/20	22/96
C-54	An Act to amend the Foreign Extraterritorial Measures Act	96/10/21	96/10/30	Foreign Affairs	96/11/06	none	96/11/07		

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-56	An Act for granting Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 1997	96/09/24	96/09/26	—	—	—	96/10/01	96/10/22	25/96
C-61	An Act to implement the Canada-Israel Free Trade Agreement	96/11/07							

## COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-216	An Act to amend the Broadcasting Act (broadcasting policy)	96/09/24							
C-243	An Act to amend the Canada Elections Act (reimbursement of election expenses)	96/05/16	96/05/28	Legal & Constitutional Affairs	96/09/26	none	96/10/01	96/10/22	26/96
C-275	An Act to establish the Canadian Association of Former Parliamentarians	96/04/30	96/05/14	Legal & Constitutional Affairs	96/05/16	three	96/05/16	95/05/29	13/96

## SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-2	An Act to amend the Canadian Human Rights Act (Sexual orientation) Sen. Kinsella	96/02/28	96/03/26	Legal & Constitutional Affairs	96/04/23	none	96/04/24		
S-3	An Act to amend the Criminal Code (plea bargaining) (Sen. Cools)	96/02/28	96/05/02	Legal & Constitutional Affairs	96/11/07	Rec.			
S-4	An Act to amend the Criminal Code (abuse of process) (Sen. Cools)	96/02/28	96/10/28	Legal & Constitutional Affairs					
S-5	An Act to restrict the manufacture, sale, importation and labelling of tobacco products (Sen. Haidasz, P.C.)	96/03/19	96/03/21	Social Affairs, Science & Technology					
S-6	An Act to amend the Criminal Code (period of ineligibility for parole) (Sen. Cools)	96/03/26		Dropped from <i>Order Paper</i> re: Rule 27(3)					
S-9	An Act providing for self-government by the first nations of Canada (Sen. Tkachuk)	96/06/13		Dropped from <i>Order Paper</i> re: Rule 27(3)					
S-10	An Act to amend the Criminal Code (criminal organization) (Sen. Roberge)	96/06/18							
S-11	An Act to amend the Excise Tax Act (Sen. DiNino)	96/06/20							

## PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-7	An Act to dissolve the Nipissing and James Bay Railway Company (Sen. Kelleher, P.C.)	96/05/02	96/05/08	Transport & Communications	96/05/15	none	96/05/16	96/10/22	—
S-8	An Act respecting Queen's University at Kingston (Sen. Murray, P.C.)	96/06/06	96/06/10	Legal & Constitutional Affairs	96/06/13	none	96/06/13	96/06/20	—

## CONTENTS

**Thursday, November 7, 1996**

	PAGE		PAGE
<b>SENATORS' STATEMENTS</b>			
<b>Remembrance Day</b>			
Senator Fairbairn .....	1121		
Senator Lynch-Staunton .....	1121		
Budget Cuts to Last Post Fund. Senator Cohen .....	1122		
Child Soldiers. Senator Pearson .....	1122		
Aboriginal Veterans. Senator Perrault .....	1123		
Senator Prud'homme .....	1123		
<b>The Economy</b>			
Senator Austin .....	1124		
<b>Broadcasting Policy</b>			
Contradiction of Media Allegations. Senator Simard .....	1125		
<hr/>			
<b>ROUTINE PROCEEDINGS</b>			
<b>Criminal Code (Bill S-3)</b>			
Bill to Amend—Report of Committee. Senator Carstairs .....	1126		
<b>Transportation Safety and Security</b>			
Report of Transport and Communications Committee Requesting Authorization to Travel for Purpose of Pursuing Study Presented.			
Senator Bacon .....	1126		
Sixth Report. ....	1126		
Senator Lynch-Staunton .....	1126		
<b>Internal Economy, Budgets and Administration</b>			
Twelfth Report of Committee Presented. Senator Kenny .....	1127		
<b>Canada-Israel Free Trade Agreement Implementation Bill (Bill C-61)</b>			
First Reading. ....	1127		
<hr/>			
<b>QUESTION PERIOD</b>			
<b>Canada-China Relations</b>			
Trial and Imprisonment of Dissident Wang Dan— Government Position. Senator Di Nino .....	1127		
Senator Fairbairn .....	1127		
Senator Prud'homme .....	1127		
Sale of Nuclear Reactors to China—Request for Details of Safeguards.			
Senator Andreychuk .....	1127		
Senator Fairbairn .....	1128		
<b>Literacy</b>			
Failure to Remove GST from Reading Materials—Effect on Underprivileged—Government Position. Senator Di Nino ....	1128		
Senator Fairbairn .....	1128		
<b>Delayed Answers to Oral Questions</b>			
Senator Graham .....	1128		
<b>Environment</b>			
Oriented Strandboard Plant in Saskatchewan—Extension of Environmental Review to Cover Downstream Effects in Manitoba— Government Position. Question by Senator Spivak.			
Senator Graham (Delayed Answer) .....	1129		
<b>Manitoba</b>			
Federal Environmental Assessment of Forestry Projects— Government Position. Question by Senator Spivak.			
Senator Graham (Delayed Answer) .....	1129		
<b>The Environment</b>			
Cuts in Funding to Experimental Lakes Area—Government Position. Question by Senator Spivak.			
Senator Graham (Delayed Answer) .....	1129		
<b>Fisheries and Oceans</b>			
Failure of Canada—European Union Action Plan—Refusal to Repeal Coastal Fisheries Protection Act—Government Position. Question by Senator Jessiman.			
Senator Graham (Delayed Answer) .....	1130		
<b>Agriculture</b>			
Destruction of Crops by Early Snowfall—Aid to Prairie Farmers— Government Position. Question by Senator Gustafson.			
Senator Graham (Delayed Answer) .....	1130		
<b>Justice</b>			
Sale of Airbus Aircraft to Air Canada—Alleged Conspiracy to Defraud Federal Government—Knowledge of Government Ministers— Request for Particulars. Question by Senator Balfour.			
Senator Graham (Delayed Answer) .....	1130		
<hr/>			
<b>ORDERS OF THE DAY</b>			
<b>Judges Act (Bill C-42)</b>			
Bill to Amend—Third Reading. Senator Bryden .....	1131		
Motion in Amendment. Senator Bryden .....	1131		
Senator Nolin .....	1132		
Senator Andreychuk .....	1132		
Senator Wood .....	1134		
Senator Lynch-Staunton .....	1134		
Senator Cools .....	1135		
<b>Foreign Extraterritorial Measures Act (Bill C-54)</b>			
Bill to Amend—Third Reading. Senator Bacon .....	1138		
<b>Canada Labour Code (Bill C-35)</b>			
Bill to Amend — Second Reading. Senator Lavoie-Roux .....	1138		
Senator Bosa .....	1139		
Referred to Committee. ....	1139		
<b>Transportation Safety and Security</b>			
Report of Transport and Communications Committee Requesting Authorization to Travel for Purpose of Pursuing Study Adopted. Senator Bacon .....	1140		

**Newfoundland**

Changes to School System—Amendment to Term 17 of Constitution—Report of Committee—Motion in Amendment— Debate Adjourned. Senator Kirby .....	1140
Senator Grafstein .....	1148
Senator Doody .....	1149
Senator Bonnell .....	1149
Senator Prud'homme .....	1149
Motion for Allotment of Time for Debate Adopted. Senator Graham .....	1150

**State of Financial System**

Report of Banking, Trade and Commerce Committee Requesting Authorization to Travel for the Purpose of Pursuing Study Adopted. Senator Kirby .....	1150
---	------

**Transportation Safety and Security**

Transport and Communications Committee Authorized to Meet During Sitzings of the Senate. Senator Graham .....	1150
--	------

**Adjournment**

Senator Graham .....	1150
----------------------	------

<b>Progress of Legislation</b> .....	i
--------------------------------------	---



*If undelivered, return COVER ONLY to:*  
Canada Communication Group — Publishing  
Ottawa, Canada K1A 0S9