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(HANSARD)

Wednesday, November 27, 1996

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Wednesday, November 27, 1996

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

Prayers.

SENATORS' STATEMENTS

JUSTICE

ROLE OF SOCIETY IN THE PROTECTION OF CHILDREN

Hon. Gerry St. Germain: Honourable senators, today the Supreme Court of Canada is hearing arguments from lawyers on whether or not to grant Robert Latimer an appeal of his conviction for taking the life of his own daughter. Meanwhile, another court trial is set to begin in the case of Brenda Drummond, who is charged with attempted murder after allegedly shooting with a pellet gun her unborn son while still in the womb. In this case, lawyers will argue whether a foetus is a person.

We who are entrusted with creating laws to protect the most vulnerable in our society must ask ourselves, "Are we doing our job very well?" In fact, just last week, two mothers of murdered children, Ms Boyd and Ms Mahaffy, had to fight to appear before the Senate committee studying changes to section 45 of the Criminal Code, which allows murderers the opportunity of early parole.

Honourable senators, are we to believe that Canada is a place where an individual can decide the value of another person's life and whether or not this person should live or die? Are we to believe that a child, days from birth, has no protections or rights? Furthermore, are we to believe that murderers have the right to early parole while parents of murdered children must fight to have their opinions heard? Are we listening to what Canadians want or are we listening only to the academics, the lawyers and the lobbyists?

As legislators, our primary responsibility is to create laws to protect those in society who cannot protect themselves. I hope that we are not here only to protect the rights of murderers. I hope as well that we have not lost sight of the value of the sanctity of innocent human life.

NEWFOUNDLAND

CHANGES TO SCHOOL SYSTEM—
AMENDMENT TO TERM 17 OF THE CONSTITUTION

Hon. Philippe Deane Gigantès: Honourable senators, please allow me to return to a subject on which I can no longer speak during the debate, namely, Term 17. I will summarize what I said on Monday, because I think it is important. There are two points —

The Hon. the Speaker: Senator Gigantès, I am sorry, but "Senators' Statements" is not the time for debate.

Senator Gigantès: But this is not debate.

Senator Doody: It sounds like debate from here.

The Hon. the Speaker: It is a continuation of the debate, and that is not permissible unless there is agreement by the Senate. Honourable senators, is there agreement?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

TRANSPORT

ROLE OF HELICOPTERS IN SEARCH AND RESCUE MISSIONS

Hon. J. Michael Forrestall: Honourable senators, the heroic events that took place just a couple of weeks ago off the northern tip of Labrador should not go unnoticed by this chamber. I should like to say a few words in praise of real heroism.

As many of you will recall, in an attempt to rescue a fisherman who had been taken ill on a Danish trawler, SARtech members of Rescue Team 421 found themselves in need of rescuing when their helicopter went down and sank in a sound off the Labrador coast. While the backup Hercules went about the business of completing the mercy mission with respect to the fishermen, additional SARtech teams from Goose Bay and Greenwood were sent out to look for their missing colleagues.

• (1340)

Two days later, as we all know, the four crewmen were found in an empty shack trying to shelter themselves from the freezing rain and driving snow. They were frost-bitten, dehydrated, suffering smoke inhalation and other injuries, but, thank God, they were alive. We now know as well that severe injuries were suffered by at least one of that crew. The crew of the Labrador helicopter that was able to land in the rough terrain to rescue colleagues was obviously thankful that they were found alive and in reasonably good condition, given what they had endured.

For many of us, however, the story does not end there. Perhaps it begins there. If anything, it draws to our attention the obvious question of why this government has not moved on undertakings given over a year ago to replace the aging fleet of search and rescue helicopters and the aging fleet of Sea Kings. We have 15 little helicopters that cannot operate out of sight of land and cannot operate in icy conditions. They are ill-suited for operations of any kind north of 60 degrees, let alone for carrying out dangerous rescue operations in the ocean.

Honourable senators, I wish to pay tribute to the SARtech team who jumped into Grenville Sound at night, clamoured aboard a dinghy, made their way to the Danish trawler and rendered aid. That, to me, is not talking about it; that is doing it. We owe that team a great debt of gratitude. I am pleased to extend my appreciation to them.

ROUTINE PROCEEDINGS

BUSINESS OF THE SENATE

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, I should like to take a moment to clarify for all honourable senators the procedure upon which we have agreed with regard to the disposal of votes with respect to Term 17.

We have a house order that the Speaker shall interrupt all proceedings at five o'clock today for the purpose of putting the questions in relation to the amendments and the main motion. Without getting into all of the rules pertaining thereto, the bells will ring for 15 minutes and we will then proceed to the taking of the votes.

To repeat, the Speaker will interrupt all proceedings at five o'clock and as soon as there is an indication that there will be a standing vote on the amendment proposed by Senator Cogger, that vote will be held. There will presumably be a vote on the amendment proposed by Senator Doody, and then we will proceed to the vote on the main resolution.

Hon. Eric Arthur Berntson (Deputy Leader of the Opposition): Honourable senators, I concur in what has just been placed on the record. We have had much advice on the procedure to be followed. Unfortunately, there have been several different interpretations of the rules. About an hour ago, we received what we believe to be the proper interpretation of the rules. It is as set out by my colleague Senator Graham.

As I understand it, at five o'clock the Speaker will interrupt the proceedings, put all questions that relate to Term 17, and ring the bells. I presume that we will proceed to the amendment proposed by Senator Cogger. The yeas and nays will be called. I assume that a couple of senators will be interested in a recorded vote. If so, the bells will then begin to ring for 15 minutes. The vote on that amendment will be held, and all successive questions will be voted upon with no further debate or further bells.

That is my understanding. I am sure that is Senator Graham's understanding. I urge all colleagues in the chamber, particularly those on this side, to ensure that their colleagues who are not currently present are made aware of the procedure.

Hon. Marcel Prud'homme: Honourable senators, I am still being left out of such deliberations. However, I totally agree with the interpretation being put to the Senate. Unless anything happens to me, I shall be here. I will take no calls.

Senator Graham: Honourable senators, to further clarify, I did attempt to get in touch with independent senators in order that they would be aware of how matters will proceed this afternoon.

FIREARMS LICENCES REGULATIONS

On Tabling of Documents:

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, pursuant to section 118 of the Firearms Act, I have the honour to table regulations designed to support that act. Pursuant to subsection 18(3) of the Firearms Act, our Standing Senate Committee on Legal and Constitutional Affairs now has the opportunity to examine these proposed regulations.

This procedure, whereby a matter is referred directly to one of our committees through a specific legislative provision, is not new. In the spring of 1995, proposed orders issuing directions to the CRTC on direct-to-home satellite distribution were tabled in the Senate and referred to our Standing Senate Committee on Transport and Communications, pursuant to subsection 8(2) of the Broadcasting Act. A similar procedure is being followed today under the Firearms Act for the proposed regulations I am now tabling.

I know that Senator Carstairs, the Chairman of the Standing Senate Committee on Legal and Constitutional Affairs, is interested in having the committee examine these proposed regulations. On behalf of all honourable senators, I wish the committee well in its work.

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

REPORT OF COMMITTEE ON FACT-FINDING VISIT TO ALBERTA TABLED

Hon. Ron Ghitter, Chairman of the Standing Senate Committee on Energy, the Environment and Natural Resources, tabled the following report:

Wednesday, November 27, 1996

The Standing Senate Committee on Energy, the Environment and Natural Resources has the honour to present its

FOURTH REPORT

Your Committee, which was authorized by the Senate on Wednesday, March 27, 1996, to examine such issues as may arise from time to time relating to energy, the environment and natural resources generally in Canada, now presents its interim report entitled *Report of the Committee's*

Fact-finding visit to Calgary and Fort McMurray, Alberta, Current and future issues and challenges in the oil and gas industry, June 3-7, 1996.

Respectfully submitted,

RON GHITTER
Chairman

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

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

CANADA ELECTIONS ACT PARLIAMENT OF CANADA ACT REFERENDUM ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-63, to amend the Canada Elections Act, the Parliament of Canada Act and the Referendum Act.

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 next, December 3, 1996.

• (1350)

CRIMINAL CODE

BILL TO AMEND—FIRST READING

Hon. Sharon Carstairs: Honourable senators, I have the honour to present Bill S-13, to amend the Criminal Code (protection of health care providers).

Bill read first time.

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

On motion of Senator Carstairs, bill placed on the Orders of the Day for second reading on Tuesday next, December 3, 1996.

BRITISH COLUMBIA

IMPACT OF ACTIVITIES OF DEPARTMENT OF FISHERIES AND OCEANS AND COAST GUARD ON INHABITANTS OF COASTAL COMMUNITIES—NOTICE OF INQUIRY

Hon. Pat Carney: Honourable senators, I give notice that on Tuesday next, December 3, 1996, I will call the attention of the Senate to the impact on the coastal communities of British Columbia of government measures involving the Coast Guard and the Department of Fisheries and Oceans.

QUESTION PERIOD

TRANSPORT

SEARCH AND RESCUE HELICOPTER REPLACEMENT PROGRAM—NEED FOR UPDATING OF CURRENT EQUIPMENT—GOVERNMENT POSITION

Hon. Gerald J. Comeau: Honourable senators, a few minutes ago, Senator Forrestall referred to the Labrador incident, as a result of which we were able to witness great acts of heroism on the part of Search and Rescue personnel. I should like the minister to note that on Monday of this week, the lobster fishery opened in southwestern Nova Scotia. I should also point out that the Atlantic Ocean can be cruel, harsh and unforgiving for those who depend on the winter fishery for their livelihood. Unfortunately, the government continues to refuse to provide these brave men and women with proper equipment, such as Search and Rescue helicopters. Nor does it seem to be mindful of those incidents that happen every year during the winter fishery.

Will the minister rise in her place today and advise us that these men and women will finally and ultimately be provided with proper equipment, the type of equipment required for the type of rescue that needs to be done on the East Coast of Canada?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, my honourable friend knows that the government is committed to the purchase of new equipment. It has announced decisions in terms of the Labrador helicopters. The commitment to the Sea Kings is firm. However, I have no new information to provide to my honourable friend today.

Senator Comeau: Honourable senators, I point out to the minister that I used the qualifier "proper and decent" equipment as opposed to just using the term "equipment." I urge the minister to get back to her cabinet colleagues and advise them that the equipment that is ultimately purchased, if and when it is purchased, should be the kind of equipment required to respond to the type of emergency situations which these people must face.

Senator Fairbairn: Honourable senators, I assure my honourable friend that the ministers involved will have as a priority the assurance that the equipment to be purchased will be fully capable of doing the job.

NATIONAL DEFENCE

CASE OF LIEUTENANT MARSAW OF THE ROYAL NAVY—POSSIBILITY OF APPOINTMENT OF MEDIATOR—GOVERNMENT POSITION

Hon. J. Michael Forrestall: Honourable senators, my question is directed to the Leader of the Government in the Senate. First, is she able to report to us the present status of Lieutenant Marsaw, who, as senators will know, is now in his twenty-eighth day of a hunger strike in Halifax? Has there been any change on the part of the government with respect to bringing the appeal on early or, far better, making possible a complete review of the circumstances under which Lieutenant Marsaw was first taken before a court martial?

I point out that the very difficult position in which the Minister of Defence is in is understandable. The Leader of the Government will also appreciate the very difficult position that Lieutenant Marsaw is in.

If there has been no change in the status of this case, perhaps a Privy Councillor, or someone from our chamber would be acceptable in performing a mediation role in an attempt to find a way around this terrible impasse that we are now experiencing? Can the minister shed any light on this subject for us.

Would the Leader of the Government in the Senate consider supporting a motion from myself, or any other member of this chamber, calling upon the Senate to constitute an ad hoc select committee that might meet over the next week to consider this problem and to report back in an advisory way to this chamber, to the Canadian public and to the government itself?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I appreciate my honourable friend's question and the spirit in which it is raised. I also acknowledge that this is an extraordinarily difficult and sad situation.

The first thing I will do is seek further information from my colleague on the status of developments. At the same time, I will pass on the suggestions of the honourable senator with regard to the appointment of some kind of special mediator.

ORDERS OF THE DAY

CANADA-ISRAEL FREE TRADE AGREEMENT IMPLEMENTATION BILL

SECOND READING—ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Stollery, seconded by the Honourable Senator Riel, P.C., for the second reading of Bill C-61, to implement the Canada-Israel Free Trade Agreement.—*(Honourable Marcel Prud'homme, P.C.)*

Hon. Marcel Prud'homme: Honourable senators, with regard to this item on the Order Paper, I informed Senator Graham that I would like to speak today on this bill. I wish to show my good faith by not delaying the sending of this bill to committee following second reading.

It has now been agreed that I will speak tomorrow. If I decide not to speak tomorrow, I will not delay the bill, since it will go to committee, because no other senator wishes to speak to it. In other words, it would not change anything.

• (1400)

The Hon. the Speaker: Honourable senators, is it agreed that this item shall stand until tomorrow?

Hon. Senators: Agreed.

Order stands.

[*Translation*]

DIVORCE ACT
FAMILY ORDERS AND AGREEMENTS ENFORCEMENT ASSISTANCE ACT
GARNISHMENT, ATTACHMENT AND PENSION DIVERSION ACT
CANADA SHIPPING ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Rose-Marie Losier-Cool moved second reading of Bill C-41, to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act, the Garnishment, Attachment and Pension Diversion Act and the Canada Shipping Act.

She said: Honourable senators, I am pleased today to move second reading of Bill C-41, an act to amend the Divorce Act and federal legislation on the enforcement of family orders. Bill C-41 establishes a framework for the use of guidelines to calculate child support payments and makes provision for new mechanisms improving the enforcement of support orders. The bill was introduced in the House of Commons in May 1996 and received second reading in November 1996. Individuals, groups representing separated and divorced parents, and legal organizations submitted briefs and appeared before the Standing Committee on Justice and Legal Affairs. The House of Commons completed third reading of Bill C-41 on November 18, 1996.

Over the last six years, federal, provincial and territorial government officials have worked together on the Family Law committee to examine the issue of child support payments. The committee concluded that the best way to ensure fair and consistent amounts for child support payments was to develop guidelines.

The bill establishes a framework for the use of the guidelines, which will be introduced through regulations once the bill has been passed. It is important to note that the Minister of Justice published a discussion paper on the guidelines for the purposes of consultation in June 1996, and he is now reviewing the guidelines in the light of the results of that consultation.

The guidelines are therefore not included in the present bill, but I believe they are so important to this reform that I must describe them. The guidelines are a method of setting child support payments that is more direct than the current approach, which is based on means and children's needs. Guidelines are used throughout the United States and in the United Kingdom, Germany, Australia and New Zealand, and in certain Eastern European countries.

The development of child support payment guidelines appropriate to the Canadian context has been a lengthy and demanding process. It took six years of research, consultation and negotiation between the various jurisdictions to come up with guidelines appropriate to Canada. A number of methods of calculating the base amount were examined, but the federal-provincial-territorial Family Law Committee concluded that the fixed percentage model offered the best way of ensuring that child support payments truly reflected parents' ability to pay.

The model is easily applied, since it requires only the income of the non-custodial parent, except if it has been demonstrated that there are special expenses. In that case, the incomes of both parents are taken into consideration. The child will reap the benefit of both parents' increased incomes, while there is recognition that the parent paying the support will not have a greater ability to pay because the custodial parent has a drop in income.

The guidelines are introduced in the regulations for three reasons: first, to be more readily consulted; second, to be more readily changed to reflect amendments; third, to enable a province to adopt its own guidelines and to apply those guidelines to court orders for child support that have been made under provincial legislation and to those made under the Divorce Act.

In collaborating with the provinces in developing the guidelines, the federal government hoped that these guidelines would be adopted by the greatest possible number of provinces, thus achieving consistency for the entire country. However, the Province of Quebec made it clear, right from the start of the process, that it would be drawing up its own guidelines with respect to child support. Some other provinces might do the same.

The federal government accepted this. The bill calls for the Governor in Council to allow application of the provincial guidelines in divorce proceedings, when both parents live in the same province. The Governor in Council has the responsibility to use discretionary powers to ensure that the provincial guidelines are complete and do not create a vacuum in the federal legislation. When the two parents do not live in the same province, the federal guidelines will apply. One of the reasons for this situation is that, in the case of an interim or confirming order, the courts are held solely to the interpretation of the federal guidelines and those adopted within their province. They will not, therefore, have to apply the guidelines of the various provinces and territories.

If a government decides to adopt its own guidelines, section 26.1, which will be added by the bill, lists the subjects and criteria to be included in the guidelines. The point is that the guidelines must be complete and not create a legislative vacuum.

Honourable senators, among all these reforms, we set a priority on child support. Bill C-41 eliminates former section 15, which covered both child and spousal support. The bill contains separate sections for the two types of support, since the amounts will from now on be determined according to different criteria.

The gist of all this may be found in new section 15.1, which provides that the amount indicated in a child support order, whether it is an interim or final order, shall be determined in accordance with the guidelines. Child support must also be determined separately from spousal support, since as of May 1, 1997, they will not be subject to the same tax treatment.

The priority given to child support is indicated specifically in new section 15.3. When the support paying parent cannot afford both payments, the court should order a reduction in the amount of spousal support and not reduce the amount of child support. Subsection 15.3(3) provides that, in cases where income is insufficient, priority is given to child support and the remainder of the money available is used to pay spousal support.

Any reduction or termination of child support constitutes a change of circumstances in the situation of the former spouses. An application for changes in a spousal support order may be made, and in that case this provision recognizes the importance of spousal support while giving the priority to child support.

As far as child support is concerned, I would like to emphasize two other provisions of the bill. The first one appears in section 25.1. This provision allows federal and provincial governments to appoint a provincial child support service to assist the courts in the determination of the amount of child support. This service will also be able to recalculate, at regular intervals, the amount of child support orders on the basis of updated income information. This is not imperative, but the provisions are there for the provinces to apply if they so desire.

The guidelines have three main parts. First, tables of the amounts applicable to each province, according to income and number of children in Schedule I; second, the rules for adjustment of or exemption from the amounts provided in the tables, which is the main body of the guidelines; and, third, criteria provided as a guide to standard of living comparisons, which, in turn, are used to determine any exemptions based on undue constraints, as seen in Schedule II.

[*English*]

• (1410)

Honourable senators, the starting rule of application is a presumptive one. Unless these guidelines provide otherwise, the amount of child support shall be the amount set out in the table plus the amount, if any, of special expenses. The only way to depart from this amount is where it would cause undue hardship to either parent or child. However, in four situations, the guidelines have advisory status only and need not apply. These are cases where, first, the payer earns over $150,000 a year; second, the child is over the age of majority; third, physical custody is shared in a substantially equal way; and, fourth, there are consent orders.

Where the court has applied the table amount, at the request of either party the court may also consider the necessity of five types of special expenses. It should be noted that this list is intended to be exhaustive: One, the child care expenses; two, the extraordinary medical or health-related expenses; three, extraordinary expenses for primary or secondary school education, or for any educational programs that meet the child's particular needs; four, expenses for post-secondary education; and five, extraordinary expenses for extracurricular activities.

Having applied the table amount and considered special expenses, if requested, either spouse or a spouse on behalf of the child could apply for a departure from the guideline amount on the ground that they would suffer undue hardship if the child support award were made. Unlike special expenses, the categories of what may cause undue hardship are not exhaustive. They include an unusually high level of debt reasonably incurred to support the family or earn a living; unusually high access expenses; a legal duty under a court order or separation agreement to support another person; a legal duty to support any child.

There are two standards for variation contained in section 11 of the guidelines: First, where the order is made in accordance with the guidelines, any change in circumstance that would result in a different child support award would justify a variation. Second, where the order was made under the existing criteria, the coming into force of the guidelines and the change in tax treatment will qualify as a change in circumstances. As well, the new paragraph 11(*b*) provides the deemed change in circumstances, which makes all existing child support orders made pursuant to the Divorce Act eligible for variation in accordance with the guidelines and the new tax treatment coming into effect on May 1, 1997.

Other than the framework for the guidelines, the bulk of Bill C-41 introduces new mechanisms to assist in the enforcement of support. In keeping with the theme of parental accountability and that child support is not a discretionary obligation, this bill puts forward amendments to existing enforcement legislation for providing additional enforcement tools.

Jurisdiction over enforcement is primarily a provincial responsibility. The federal government plays an important supporting role in this area by funding provincial enforcement programs and, through its legislation, by garnisheeing certain federal moneys and by helping to trace defaulting debtors through federal data banks. The two statutes providing for these measures are the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act.

The federal tracing mechanism used to find defaulting support payers will be made more effective with the addition of Revenue Canada data banks to the information banks that can be searched for information on a debtor's address. These data banks will contain some of the most recent and complete data. It is important to stress that only address information is being released, and that privacy safeguards are in place for the release of information to the provincial enforcement programs.

Perhaps more important, the proposed Part III to the Family Orders and Agreements Enforcement Assistance Act provides for an innovative enforcement tool that is being used or considered by some provinces — a licence denial scheme. This is a new enforcement measure to be undertaken by the federal government in order to assist the provinces and territories in their enforcement efforts. License denial will be accessible, not by individuals but rather on formal application and affidavit by an officer of a provincial or territorial enforcement service. This is in recognition of the fact that every province and territory has an existing enforcement program with the mandate and expertise to best make use of this enforcement tool. When this measure is implemented, the federal government will suspend, as well as refuse to issue or renew, passports and specific licences provided for the Aeronautics Act and the Canada Shipping Act.

At this point, the scheme is set up to apply only to passports and specific federal aviation and marine licences and certificates as set out in the schedule to this bill. The government, however, is continuing to examine ways in which to include other federally issued licences and certificates, where appropriate.

Bill C-41 indicates that a support payer must be in persistent arrears before a request for a federal licence denial can be made by a provincial or territorial enforcement agency.

[*Translation*]

Honourable senators, the expression "persistent arrears" is defined in the bill, and refers to arrears when a support payer has not made full payment for three payment periods or to arrears of at least $3,000.

This definition is a reasonable standard, which reflects the type of significant default that would warrant resorting to the severe penalty of denying a licence or permit application.

This is designed to encourage a debtor to pay support rather than to continue avoiding to do so. Particular importance has been given to notice to the debtor to ensure that he can avoid being denied a licence or a permit by concluding the necessary payment agreements with the enforcement authority.

The proposed legislation provides that the licence or permit denial procedure shall cease once the debtor is no longer in default if he complies with a reasonable payment agreement, if application of licence or permit denial measures is not reasonable under the circumstances or if the enforcement service ceases to enforce the support order.

The bill also proposes the establishment of an offence punishable on summary conviction when the debtor refuses to surrender or uses his passport after having received notice that the passport has been suspended under the denial system.

This measure was included on the advice of the Passport Office of the Department of Foreign Affairs, to provide an additional mechanism to take further steps if the passport holder does not willingly surrender it. By the inclusion of this new offence under the Family Orders and Agreements Enforcement Assistance Act, a peace officer would be justified, if the passport has not been surrendered, in launching an investigation and in requesting a warrant, under section 487 of the Criminal Code, to seize the passport.

The bill also provides amendments to improve federal garnishment services. The federal government garnishees or attaches about $53 million each year, in income tax refunds, unemployment insurance benefits and other federal payments. Salaries of federal government employees can been garnisheed, and their pensions can be diverted.

The amendments to the Garnishment, Attachment and Pension Diversion Act will make it easier to garnishee salaries paid by the federal government. This was formerly a two-stage enforcement process; it will now be reduced to a single stage, through the elimination of the requirement to provide a notice of intent to garnishee before serving a garnishee summons.

This is similar to garnishments in the provinces or in the private sector, where such notices are not a requirement.

Amendments to part II of the act will also eliminate the requirement for the applicant to be domiciled in Canada or ordinarily resident in Canada. This was necessary because some former spouses, mostly women, have been denied the benefit of pension diversion under the act because they have left the country.

The amendments will give the courts the power to order the diversion of certain specific pension benefits under the Public Service Superannuation Act. At present, former employees who are entitled to retire before reaching 60 years of age can ask for an immediate pension, with applicable reductions, or for a deferred annuity upon reaching 60 years of age, which would delay diversion of pensions for the purpose of support.

The new provisions of the bill will eliminate this loophole. They will allow a support creditor to ask the courts for an order for immediate payment of the annual support payment; and this amount could then be diverted immediately. Obviously, this provision removes the debtor's right to choose the point in time when he wants to receive a pension and reduces the amount of retirement benefits. Therefore, a court issuing such an order must be convinced that there are significant arrears and that other reasonable enforcement steps have been taken.

The bill also allows pension administrators to divert more than the maximum amount, currently set at 50 per cent of net retirement benefits. The original purpose of this rule was to protect a portion of the pension because pensions are rights under the law and are probably the only source of retirement income. This approach is still appropriate under normal pension diversion conditions. However, since family support is now considered a major obligation, this new provision recognizes that protection is not warranted where there are arrears.

Finally, Bill C-41 proposes an amendment to paragraph 203(1)(*a*) of the Canada Shipping Act. This shows the government's commitment to taking the necessary steps, within its own jurisdiction, to facilitate enforcement of support orders. This provision will eliminate the legislative obstacle prohibiting garnishment of a sailor's wages for the purpose of family support.

In conclusion, the bill provides new mechanisms for setting fair and reasonable amounts for child support payments through application of child support guidelines, and a more effective support order enforcement system, which in the end will be of benefit to children.

On motion of Senator Jessiman, debate adjourned.

• (1420)

[*English*]

APPROPRIATION BILL NO. 3, 1996-97

SECOND READING

Hon. Philippe Deane Gigantès moved the second reading of Bill C-68, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 1997.

He said: Honourable senators, the bill before you today, Appropriation Act No. 3, 1996-97, provides for the release of the total of the amounts set out in Supplementary Estimates (A) for 1996-97, some $1.5 billion. The Supplementary Estimates were tabled in the Senate on October 24, 1996, and referred to the Standing Senate Committee on National Finance. These are the first Supplementary Estimates for the fiscal year that ends on March 31, 1997.

[*Translation*]

Honourable senators, these Supplementary Estimates represent some $1.5 billion. In terms of financial planning, the various figures that go to make them up were set out in the budget announced on March 6, 1996, and are in keeping with the economic and financial forecast tabled on October 9 and will not prevent the attainment of the deficit reduction objective.

[*English*]

This bill also seeks Parliament's authority to discharge liabilities that were provided for in the deficits of previous fiscal years. Although approximately $1.5 billion must be approved by Parliament through this Appropriations Act, the net spending requirement of $924.6 million identified in the 1996-97 Supplementary Estimates (A) is a result of a reduction of approximately $600 million due to a decrease in forecast spending pursuant to a number of statutory items that have already been approved by Parliament and are included in the Supplementary Estimates for your information.

[*Translation*]

You will recall no doubt that these Estimates were examined in detail with representatives of the Treasury Board Secretariat when they appeared before the Standing Senate Committee on National Finance on October 30.

• (1430)

[*English*]

The major items in the Supplementary Estimates include $432.8 million for 44 departments and agencies to meet operational requirements originally provided for in the 1995-96 budget. This amount reflects a feature of the government's approach to operating budgets and is intended to reduce year-end spending and improve cash management. This feature allows managers to carry forward from one fiscal year to the next up to 5 per cent of the operating budget of the previous fiscal year. The operating budget includes salaries, operating expenses and minor capital expenditures.

[*Translation*]

An amount of $132 million is allocated for the Department of Human Resources Development for increased subsidies under the Atlantic Groundfish Strategy. These expenditures will not mean an increase in the $1.9 billion overall cost of the program launched in 1994.

The next item is $118 million for Transport Canada for severance pay relating to the commercialization of the air navigation system.

[*English*]

Honourable senators, $117.7 million is allocated for Agriculture and Agri-Food Canada for grants and contributions to individuals and organizations, related primarily to changes in the grain transportation system and the marketing of Canadian agricultural products.

The government has allocated $100 million for Canadian Heritage as a contribution to the Canadian Television and Cable Production Fund that will be established as an independent, private, non-profit corporation to expand and enhance Canadian television programming.

An amount of $73 million is allocated for Industry Canada for Technology Partnerships Canada contributions to support technological development in the environmental, aerospace and defence sectors.

Hon. Eric Arthur Berntson (Deputy Leader of the Opposition): Honourable senators, I understand that it is the practice with respect to supply bills that for the most part they do not receive a great deal of debate. Debate on such bills is held in abeyance until the Estimates are debated.

Therefore, we do not object to this bill going on to the next stage.

Motion agreed to and bill read second time.

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

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

NEWFOUNDLAND

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

On the Order:

> Resuming debate on the motion of the Honourable Senator Rompkey, P.C., seconded by the Honourable Senator De Bané, P.C., for the adoption of the Thirteenth Report of the Standing Senate Committee on Legal and Constitutional Affairs (*amendment to the Constitution of Canada, Term 17 of the Terms of Union of Newfoundland with Canada*), deposited with the Clerk of the Senate on July 17, 1996;
>
> And on the motion in amendment of the Honourable Senator Doody, seconded by the Honourable Senator Kinsella, that the Report be not now adopted but that it be amended by deleting the words "without amendment, but with a dissenting opinion" and substituting therefor the following:
>
> with the following amendment:
>
> Delete the words in paragraph (*b*) of Term 17 that precede subparagraph (*i*) and substitute therefor the words: "where numbers warrant,";
>
> And on the subamendment of the Honourable Senator Cogger, seconded by the Honourable Senator Bolduc, that the motion in amendment be amended by substituting for the words "with the following amendment:" the words "with the following amendments: (*a*)" and by removing the period at the end thereof and adding the following words:
>
> ; and
>
> (*b*) Delete the words "to direct" in paragraph (*c*) of Term 17 and substitute therefor the words "to determine and to direct".

Hon. Duncan J. Jessiman: Honourable senators, I rise today to provide my small contribution to the debate on the proposed amendment to Term 17 of the Terms of Union of Newfoundland with Canada.

As a member of the Standing Senate Committee on Legal and Constitutional Affairs, I attended and listened carefully to the many submissions made to the committee in June and July, 1996, both in Ottawa and St. John's, Newfoundland. There is no doubt that this issue is a very controversial one for that great province.

I have listened and read the statements made in this debate in the Senate by all those who have spoken so far. There are exemplary statements on both sides of the issue. It is my opinion that the denominational rights provided in 1949 and in 1977 to the seven different Christian religious groups in Newfoundland were and are protected against provincial legislation of Newfoundland and Labrador that would prejudicially affect any right or privilege with respect to denominational schools.

Term 17 of the terms of union of Newfoundland with Canada in 1949 is clear and unambiguous. I read the pertinent words:

> In lieu of section 93 of the British North America Act, 1867, the following Term shall apply in respect of the province of Newfoundland: In and for the province of Newfoundland the legislature shall have exclusive authority to make laws in relation to education, but the legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational schools...

There are other words, but I will leave those out at the moment.

As of 1949, six such classes of persons existed, and then in 1987 the Pentecostal church asked for and received the same denominational rights enshrined in the Constitution. It is also clear from section 29 of the Constitution Act, 1982, that the Canadian Charter of Rights and Freedoms does not abrogate or derogate from any right or privilege guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools. The reason behind all this is that each of the seven minorities was to be, and should be, protected against the majority. It is my view that their rights cannot be taken away without the consent of the majority of each of the minorities.

Some of the minority religious groups in Newfoundland have agreed that their rights be taken away. That is fine, but it does not take away the rights of the minorities who do not want their rights taken away as set out in the amendment to Term 17 as proposed by the government.

Although proponents on the other side of this issue say that they are not relying on the fact that a majority of Newfoundlanders voted in the referendum in respect of Term 17, they say it is a factor one should consider in trying to decide whether we as a Senate should pass the proposed government resolution.

I point out to honourable senators that before this referendum was voted on, the Newfoundland government at the time provided to each and every household in Newfoundland a pamphlet that read, in part, as follows:

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

Those words, "where numbers warrant," are the exact words Senator Doody has included in his amendment.

I must also say that it does not matter if all the provincial politicians in Newfoundland want this change, such legislation, to my mind, is beyond the jurisdiction of that body. The question then is: Can Parliament, together with the provincial legislature of Newfoundland, pass laws that would expunge these rights of minorities which are enshrined in the Constitution? It is my view that they cannot.

If a vote in respect of the government's proposed amendment were taken by class — that is, a vote of all Catholics, Pentecostals, Seventh-day Adventists and all the others — then the amendment would be binding on only those classes that favourably voted for such amendment.

• (1440)

At the hearings in Newfoundland, the proponents of amending Term 17 said that the words "to direct" the teaching of aspects of the curriculum affecting religious beliefs meant the same as "to determine and direct."

Senator Cogger's proposed subamendment would leave no doubt that the denominational schools would not only direct but also determine curricula affecting religious beliefs. It is my view that the amendment to Term 17, as proposed by the government, is *ultra vires* as against the minorities who were given these rights in the Constitution and who do not consent to such amendment. Therefore, such proposed amendment should be defeated.

I am told, however, that representatives of the Catholic Church, the Pentecostal Church and the Seventh-day Adventists, the only three classes of persons who opposed the government's proposed amendment to Term 17, would prefer that that amendment be defeated, period. However, we have been told that, if Senator Doody's amendment and Senator Cogger's subamendment were passed, all three — that is, the Catholic, Pentecostals and Seventh-day Adventists — would accept the changes and not challenge them in court.

For these reasons, although I think it would be better to defeat the amendment to Term 17 as proposed by the government, I will vote for both Senator Doody's amendment and Senator Cogger's subamendment.

I close by quoting from some words spoken in 1980 by a federal politician respecting denominational schools in Newfoundland when they were discussing the Constitution Act of 1982:

> ...There has been some suggestion from some quarters in Newfoundland that ideally we are going to go to the ultimate in enshrining protections in stone. It should be or could be necessary, or would be desirable for the Constitution Act, 1980 —

which became the Constitution Act of 1982,

> — to also not only protect the denominational educational system from any possibility of change as a result of federal initiatives, but to protect the denominational educational system also from any possible changes as a result of provincial legislature initiatives.

That politician was Brian Tobin.

Hon. Charlie Watt: Honourable senators, I take what is being proposed by the Government of Newfoundland seriously. I believe it is my duty and responsibility to address an issue that I feel is not adequately covered by interested groups. I, for one, have great difficulty understanding the concept of so-called "minority groups" that seems to be on the agenda today. I am not sure what is meant by the term "minority."

When I say "minority," I mean "people." However, senators in this place are arguing the case for and against a minority, and by "minority" they are referring to an institution. It is a church institution, which is just like any institution.

Unlike the experience of some aboriginal people, my experience with religious groups has not been negative. I was never mistreated by them and, therefore, I have no axe to grind. However, it is important to address this issue, knowing that my people today, including the Innu, who are Indians, are negotiating with the Newfoundland government respecting their long-term, outstanding problems of aboriginal issues and rights.

Some time ago, I addressed this matter and called the attention of senators to the fact that, when Newfoundland entered Confederation in 1949, the aboriginals were not given the same recognition as the church groups within the undertaking.

I believe that when the Newfoundland government decided to enter into Confederation, some kind of deal must have taken place allowing religious institutions to have power over the government in relation to educational matters.

As I asked earlier: Where do we fit in? What overrides what? The aboriginal people do have section 35. I will not go so far as to support the concept of amending this particular resolution, because I think that section 35 stands by itself, but if you do not equip the Newfoundland government with the tools they require to make changes, once again our aboriginal people will be unable to achieve what they deserve, which is to have some control over their own destiny.

For that reason, I urge every one of you to support the passage of this resolution, without amendment. The government must be empowered. One of the reasons they came to the central government to ask for an amendment to the Constitution was that they could not fix the problem on their own. They have been trying to do that for quite a number of years but have been unsuccessful.

I also remember that when they debated this issue in the Newfoundland House of Assembly the second time around, Liberals and Conservatives were overwhelmingly in favour of this amendment. I believe they were unanimous.

For that reason, I do not view this as a simple power struggle between religious and governmental institutions. It must be more than that. Otherwise, they could have rectified this matter some years ago.

Do the right thing. We owe it to our country and to our people.

The government of Newfoundland knows what it is doing. Perhaps past governments did not have the guts to push it through, but this time they are pushing it through and it requires good attention from senators in this chamber of second sober thought. Do the right thing.

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, I think there is nothing or very little left to say on this matter. To return to the source of the debate, and I am addressing my colleagues in my party, since I was a member of the Liberal Party of Canada all my life, how would a Liberal, a champion of minorities, explain a constitutional right? What is a protected minority right? Not a right protected because it makes the majority happy, but because it is in writing. Being a Liberal myself, I do not understand — and this is not a criticism — how minority rights can be diminished. I do not understand.

My birthday is on the weekend, I am going to be older, and I do not understand how legislation diminishing acquired rights can be passed. I had an extraordinary experience recently.

[*English*]

I was a guest at Mount Allison University for their graduation. I wanted to honour a great Liberal, Catherine Callbeck, who used to be a colleague of mine in the House of Commons. She was receiving a doctorate. I like the tradition of Mount Allison University. They sang God Save the Queen the night before. I respected that, and I sang it. They have a series of religious ceremonies that are not from my church, but I went along with those. The following day, there was a great graduation ceremony.

Then I had an argument with a female moderator from the Protestant church who was giving reasons why all of that sort of thing should be abolished at Mount Allison. I said "Why?" The female moderator, whom I will not name, said, "You do not understand, Senator Prud'homme. We live in an inclusive society." I said, "What is an inclusive society?"

Is it right to make of Canada a je ne sais quoi just to say that we live in an inclusive society, as if everything that was done in the past was wrong, and as if all those who went through the school system of Newfoundland are a bunch of morons? Let me assure you, honourable senators, that they produce great Canadians in Newfoundland. I could give you name after name, but I do not want to go through these today. In any event, they were all great Canadians.

I will mention the name Jamieson. I was his parliamentary secretary for many years. There are others, many church leaders from every religion. Was their educational system so bad? It is akin to the attitude of those who keep talking about the great darkness of Quebec.

Look around here, honourable senators. Look on both sides at les Canadiens français du Québec. They were all produced from the great regime of this so-called great darkness of the old days. I do not understand these people who are ready, with the stroke of a pen, to take rights away.

I had an experience this morning. I was with Mr. McTeague, a member of Parliament from the other side. I had invited him, and we went to meet with a delegation from Bangladesh, who were in the Senate gallery yesterday; you applauded them. They said, "We wish that what you do in Canada will some day exist in our country, where each and every group has a different sensitivity to all others, where all rights are protected and you do not try to make everyone the same."

What is it to be Canadian? Is it to have Marcel Prud'homme with Senator Spivak, with Senator Doody, with Senator Cohen or with Senator Rompkey?

Honourable senators, this is a unique country where we treat people differently. I do not agree with those who believe that everyone should be treated the same. It is not true. Look at the electoral system. PEI is represented by four members of Parliament because there are four senators. They do not deserve four. We say, "A province must have four; it cannot have less." New Brunswick should have seven members in the House of Commons; they have 10 because there are 10 senators. This is unfair for Ontario. I am not mentioning Quebec. It is unfair for B.C. and Alberta as well, not to have the number of members of Parliament that they should. It is not the fault of Quebec. Quebec represents one-quarter of the population, but Quebec is always blamed. Manitoba has 14 members; they should be allowed 11 members. Saskatchewan has 14 members in the House of Commons; they should have 10. Is this the same thing? No. Are people yelling and crying? No. That is what Canada is all about — provinces trying to accommodate one another, small provinces and minorities of every kind. What can we say to students when we talk about Canada? We say that in Canada we do it differently; we protect and respect each other.

When I go to British Columbia, I love to go to Victoria to see this great ceremony of tea and crumpets. People say it is crazy. However, if you go to Quebec City and visit the Chateau Frontenac in the afternoon, you can drink coffee and listen to the violin being played by people wearing white wigs. It is part of our tradition in this country to have different traditions across Canada.

Some would say that everyone should be the same, and the school system should be the same. I do not agree. As long as we teach in schools that my self-respect —

[*Translation*]

My pride stops where the lady's pride begins.

[*English*]

That is what it means to be a Canadian. That has nothing to do with religious fanaticism, not at all. It is to say, I am Canadien français and Catholic, and I am proud of it. That is what I say across Canada, and I am always applauded in Western Canada when I stand up for what I am. However, I know that my pride stops where the pride of Senator Forest or Senator Hays starts. That is what it means to be a Canadian.

Sometimes we become impatient with each other, and we do not want to take chances. That is why we drafted a Constitution. A Constitution ensures that, in a time of impatience, the majority will not stamp on the rights of minorities. That would be a good definition of a Constitution to give to students. What is important is what is written.

I would prefer to be British-minded. I am British. After all, I am very privileged. France has given me my cultural origins and Great Britain has given me my political Constitution. I stand and defend both of them.

People said all kinds of nonsense during the debate. They said, "27 school boards; we need 10." Honourable senators, I read the report of the royal commission last summer. They went from 27 school boards to 10. I stand to be corrected by an honourable senator from Newfoundland.

I agree that it makes no sense to have multiple boards and buses for small villages. I visited Newfoundland. I was there during the referendum. I exchanged vigorous views with Premier Wells on the issue. Yes, it makes a good argument to laugh at the many schools and buses in some villages, but it is disappearing now. You merely need to keep the pressure on, and they will understand that it makes no sense. It is a stupid argument to have many buses for different schools. Yesterday we were given that argument as if it was a great venture for the school system in that province.

I am a great Laurier fan. I have read all of the books about Laurier, the latest one included. I know where he would vote on this issue today. He stood as a Canadian and said, "I am a Canadian, but I will stand up for the rights of everyone else." He did that in Quebec in French.

• (1500)

Senator Oliver: Are you referring to the rights of minorities?

Senator Prud'homme: Yes.

I am happy to be in the Senate because I love to listen to arguments. I do not think it is frivolous to say that I passionately believe in this matter. In the face of an argument that is much better than mine, I am ready to give in. That is what we should do.

However, nothing that has been said has convinced me that the wish of the majority should take away the rights of minorities. That is not the Canadian way.

I know Premier Tobin. I sat with him for 15 years in the Liberal caucus. He replaced me — and I say that mildly — as chairman of the National Liberal Caucus. I was elected in a secret ballot. I would never have been elected in an open ballot within the Liberal Party. Every time I ran for office in the Liberal caucus, whether in Quebec or nationally, I won because the ballots were secret.

I will be positive today. I think Mr. Tobin should continue with his great power of conviction to work on the churches to get the best system he can. He can get what he wants with two key words, "patience and compromise." The essence of politics is treating others with respect.

My friends Senators Watt, Marchand and Adams know that it is more of a commitment today than ever before. I am arranging visits with all the Indian and Inuit leaders in Quebec. I am doing it to help in the rapprochement between them and us. Senator Marchand knows that I have done this sort of thing in the past.

Tampering with rights of any kind and using a majority to do so is something that worries me.

The Hon. the Speaker: I regret to interrupt the Honourable Senator Prud'homme, but his time has expired.

Senator Prud'homme: Honourable senators, I request a few more minutes.

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

Hon. Senators: Agreed.

Senator Prud'homme: My concern is this: Who is next? Who will fall next to the will of a majority in this country which says, "Let us vote. Let us have a referendum?" They say those words, having in mind, "We will crush these people who are making us nervous." Not only does this worry me, it worries many Canadians who are asking themselves, "Who will be next?"

We should not set such a precedent because the Canada that we know and want to keep will not remain the Canada that has such a wonderful reputation in the world. In other parts of the world it is said, "Boy, in that country they act intelligently with each other even though they are so different. Yet, with accommodation, they succeed in being the example to which everyone looks."

[*Translation*]

In my soul and conscience, I would have liked to adopt the government's viewpoint, but I cannot. It is a matter of profound conviction. I am convinced we would be making a mistake. I am convinced we are going to make a mistake.

[*English*]

If the vote goes the way I would like it to go this afternoon, I hope that some Liberals will talk to Mr. Tobin and say, "Please, Brian, do not insist on this. Try again to get what you want with more patience and time. The pressure is now on the churches to understand. Try again. Gradually, you will convince people."

We will show the rest of the world that, when we in Canada say that something is protected in the Constitution, we mean what is written in the Constitution. It is written that this province was promised that if it joined Canada, it would have a railway system. That railway was transformed into one of the best in the world. I know because I travelled on it. We were obliged to give a railway system. However, the railway is no more. Go to see the good roads that exist there. That is Canada at its best.

I have no hesitation in talking about my country. The kind of country I like is one in which we can show what we really mean.

Honourable senators, I do not know if I can make a special appeal to you to vote the way I feel we should, but I hope those who are thinking of not voting will come back or stay with us. These types of votes are the most important votes in the Senate. As I said at the beginning of this debate, the Senate was created to deal with issues such as this. Therefore, we will vote on this issue. Being a democrat, I will abide by the decision that is rendered.

[*Translation*]

Hon. Céline Hervieux-Payette: I want to put a short question to help my colleague. I would like to know if, while searching with his soul and conscience — and after receiving so many letters from all the churches of Canada, because I have never heard as much from churches since I got here, and even since I got into politics — my colleague considered the fact that, in Quebec, we separated the church and the state in our education system, on the basis of a report by Mr. Gérin-Lajoie, who had also produced a previous report.

Historically, this occurred after the Duplessis years, the period of "grande noirceur" or "great darkness," when women had to stay home and did not have access to higher education. This is when the principle of universality was adopted.

My question is the following: Is this an issue relating to minority rights or to the separation of the state and the church? Personally, I will support the unamended resolution. I believe issues relating to the state should be dealt with by the state, while the church should take care of religious matters.

• (1510)

[*English*]

Senator Prud'homme: This is a dangerous question, because I am on extended time. Will you allow me to answer this question, Your Honour?

Hon. Senators: Agreed.

Senator Prud'homme: First, to be very blunt, I do not see the relevance of the question. It was a bit smart to say, "Did you think of that with your heart and conscience?" I have known the honourable senator too well for too long to know that she is not a little facetious. We could have a nice debate.

[*Translation*]

Honourable senators, we could hold a good debate on what was done after the Parent commission, when classical colleges were abolished and replaced with the current education system. I am not the one saying that it was a major mistake to abolish classical colleges in Quebec and to replace them with what we have now, those CEGEPS, where several thousand students from various fields are all grouped together. What do they do there anyway?

I see some honourable senators who know more than I do about the education system. I am not sure what happened with this change, this major upheaval. I do not see why it was made either.

I supported the election of the first women in Quebec. In 1961, I felt there were not enough women MNAs or MPs in Quebec. I almost lost my position as president of the Université de Montréal's law student union, to opponents such as Bernard Landry, because I had given my support to Claire Kirkland-Casgrain. I gave her one month of my time while I was president of the student union, because I found it was not right that no women held public office.

Society evolves. The fact that it was not written in the Constitution did not mean women could not get elected. I do not see what this has to do with our discussion. To be sure, there was some control over education.

Any woman who knows how to fight can beat any man. You know that very well. At one time, it was necessary to resort to affirmative action to get Jeanne Sauvé and Monique Bégin elected. This is true. It was not priests who tried to keep them from becoming members of Parliament, it was macho politicians. You know them. They were your friends and mine. We forced some older MPs into retirement. We gave them the best possible appointments. Then Jeanne Sauvé became a member of Parliament. I will tell you one thing: She did not need the help of these machos to get re-elected, nor did the late Albanie Morin. What was needed were people who believed in equality. Eeveryone must fight his or her own battle. I would really have preferred to hear you make a long speech to know all of your opinions.

You say you believe in keeping the state and the church separate. So do I. As far as I know, it is not written in any constitution. It is not in our own Constitution, which states that some institutions are protected. Had you made a speech, I would have asked you what a constitution is. Second, tell me what a true Liberal is and, third, tell me what Canada is. Canada respects the specificities that helped create our country, our provinces and our government, and that have earned it universal admiration. There must be some basis for this, honourable senators. It is not based on some indefinable concept. It is based on a real situation.

[*English*]

"Give me this, and I will give you that." "Well, maybe, but I don't trust you." "We will put it in the Constitution." Why was Mr. Trudeau so hot for a written Constitution? It was because he did not trust politicians.

An Hon. Senator: And he should know.

Senator Prud'homme: He is the one who insisted on putting in six months, and, some say ungraciously, it was because he did not like the Senate. He said that if he ever had a deal with the provinces, the Senate certainly would not stop him. He put in a six-month suspensive veto. I see some Liberals laughing, because they know about the matter. He did not like the Senate.

Do honourable senators remember Bill C-60 by Marc Lalonde to reform the Senate? You did not like it, and I did not like it. Since he did not like the Senate, he said, "I will put in the Constitution a six-month suspensive veto with regard to matters pertaining only to the Constitution. If I have another deal with the provinces, the Senate will not stop me for more than six months."

The six months will apply on December 1. I am thankful to the minister. I wish to be gracious to Senator Fairbairn.

[*Translation*]

I thank the party and government officials for allowing a vote on this issue. I would have been extremely disappointed and, in fact, I would have become a staunch opponent of the Senate if we had not been allowed to vote on this important issue, regardless of the result. The Senate's first responsibility is to represent regions and minorities.

[*English*]

Hon. Peter Bosa: Honourable senators, I should like to make a brief intervention on this issue. It was not my intention to take part in the debate, but I wish to say that I will vote "no" on the amendments, and I will vote "no" if Term 17 is amended, and I will do so fully conscious that I am not trampling on the rights of the minorities.

I am grateful to Senator Rompkey, who put this matter succinctly and clearly for me. He said that the full purport of Term 17 is to put Newfoundland on the same basis as the other provinces in Canada — in other words, so that they have the control of the purse-strings.

I do not believe that Term 17 will trample on the rights of the religious minorities. It will only take the spending power away from the churches and give it to the government, which is the way it is in the rest of Canada. That is why I will vote against the amendments and am in full support of Term 17.

An Hon. Senator: Hear, hear!

Senator Prud'homme: You are very gracious today, and colleagues are gracious in allowing all these interventions.

The Hon. the Speaker: Senator Prud'homme, is this a question?

Senator Prud'homme: The honourable senator profited from the fact that I had the floor, and now I wish to ask him a question.

The Hon. the Speaker: Senator Prud'homme, please ask a question of Senator Bosa.

Senator Prud'homme: My dear senator and friend, if today there was a referendum in this country to remove multiculturalism from the Constitution, do you think the majority of Canadians would not vote for it?

Senator Bosa: I am a member of a minority group, and I would safeguard the rest of the minorities.

Senator Prud'homme: You are not part of a minority group; you are a Canadian.

Hon. John Lynch-Staunton, Leader of the Opposition: Honourable senators, it was not my intention to participate in this debate, but if I do rise today, it is largely the result of remarks by Senator Milne, which were subsequently picked up by Senators Pearson and Lewis, to the effect that the Senate may be treading on dangerous ground by considering and voting on anything but the resolution itself. Senator Milne fears that by approving the resolution in other than its original form, the Senate might, in her words, "induce a constitutional crisis." As she rightly notes, there is but one precedent for the Senate proceeding in this way. At the time of the debate on the Meech Lake Accord, the Senate amended the resolution, returned it to the House of Commons, and so advised all of the provincial legislatures and a number of aboriginal groups.

As an interesting footnote to this, during Senate debate in 1981 on the Constitution itself, Conservative senators did put forward amendments to the act, and at no time was their appropriateness challenged on the government side, as they are today. Even less were fears expressed that, if adopted, a crisis could ensue. No doubt the massive Liberal majority at the time may have had something to do with its lack of preoccupation over procedure, unlike the situation today.

In any event, the reaction of the government to the Meech Lake Accord amendments was in line with that of any government's reaction to the Senate not adhering to its wishes as confirmed by the majority in the House of Commons: anger, annoyance, and frustration.

• (1520)

In his speech of May 19, 1988, reintroducing the "constitutional amendment," as the Meech Lake Accord was formally termed, the Minister of Justice, the then Honourable Ray Hnatyshyn expressed these and other similar feelings in no uncertain terms. At the same time that he complained of the Senate's decision, he ignored it completely, since the reintroduction of the Meech Lake Accord was, word for word, the same as what was put before the House of Commons seven months earlier. In other words, the Senate's amendments were never recognized.

The Minister of Justice explained the procedure as follows:

> Fortunately, the members appointed to the other place do not have the power to override the collective will of the democratically elected representatives of the people in their provincial and federal legislative assemblies. Canadians have an obligation to ensure that the proper national will on a matter of the most fundamental importance to our country is not stifled by unelected opposition members in the other place. In fact, the Constitution expressly provides that an amendment may be made without a resolution of the Senate if the House of Commons again adopts the resolution after the expiration of 180 days from the time the House of Commons first adopted the resolution.

Had the appointed Senate an absolute veto, I would agree with Senator Milne that adopting an amendment to a constitutional resolution would provoke at least a dangerous constitutional impasse, if not a crisis. Such cannot be the case, however, as in matters constitutional our concurrence is requested but not required. Our advice may be forwarded and, no matter how sound, completely ignored.

Why bother then, many may ask, with spending so much time and energy on the Term 17 resolution when, in the final analysis, the House of Commons and the Newfoundland House of Assembly will effectively determine its outcome? If our approach to the resolution had been conditioned only by this legal reality, it is unlikely that the matter would have stayed very long on our Order Paper.

Fortunately, the Senate and, in particular, the opposition has not been distracted by its limited impact on the shaping of the Constitution. It has engaged in such a thorough examination and analysis of this resolution that its deliberations and advice cannot but be given serious study, and at least provide reflection to those now alerted to, and concerned with, the possible long-term significance of the proposal before us should it be adopted in its original form.

Certainly, one thing that we have all agreed upon is also the most obvious: Education comes under provincial jurisdiction, and Newfoundland, like any other province, is free to establish and administer a school system without outside interference. There is no argument here. However, at the same time, Newfoundland and the other provinces are bound by constitutional requirements that were confirmed at the time of their entry into the federation. These and many other parts of the Constitution may now seem to many to be archaic and unsuited to today's political and social environment — an appointed Senate, for instance; the position of a lieutenant governor; the amending formula.

The Constitution, nonetheless, with all its flaws and imperfections, remains the basic law of the land. If it is not respected, then the rule of law loses all meaning. We must limit ourselves to assessing whether the constitutional safeguards, which we are being asked to alter and which were confirmed by all parties in the Terms of Union in 1949, have received the concurrence of those same parties. The resolution before us does not meet this fundamental requirement, as we have heard repeatedly, particularly from witnesses — and not just those representing various religious denominations — when they appeared before the Standing Senate Committee on Legal and Constitutional Affairs during the early summer, and most eloquently from many colleagues on both sides of this chamber.

This is the third time in the last three years that we have been asked to concur in an amendment affecting only one province. The one which most resembles that which is now before us was the amendment confirming the bilingual status of New Brunswick, following years of effort to achieve this goal through legislation, thanks to the persistence of many, not the least that of our colleagues Senators Robichaud and Simard. Why did the New Brunswick francophone minority want the protection of its legislative status confirmed in the Constitution? To make it immune from the whims of provincial legislation.

Colleagues will recall a political movement that was quite active in New Brunswick at one time, even forming the Official Opposition in 1991, which advocated unilingual status for the province. By amending the Constitution to say that, henceforth, Canadians confirmed New Brunswick's status as a bilingual province, Canadians added another minority right to others that have contributed so much to making Canada what it is.

It was only nine years ago — in June of 1987, to be more specific — that the Senate was asked to concur with another amendment to Term 17 in order to give those of the Pentecostal faith the same protection for their educational rights as had been given in 1949 to various other religious denominations. The Government of Newfoundland passed a resolution to this effect on April 10. The House of Commons agreed on June 23 and the Senate on June 30. There was no referendum. There were no committee hearings in either House. The debate lasted a grand total of three very short days: one in the other place, two in the Senate. One who spoke in favour of the amendment to grant Term 17 status to the Pentecostal assemblies was the member for Grand Falls-White Bay-Labrador, now Senator Rompkey.

Senator Kinsella: It was a good speech at that time.

Senator Lynch-Staunton: Senator Rompkey pointed out at that time:

> At the time of Confederation in 1949, the denominational system of education was enshrined in the Terms of Union because Newfoundlanders wanted to retain a spiritual base to the kind of education that went on in our schools. We still believe that that is very important.

Senator Rompkey was very pleased also to draw attention to Pastor Roy King, the head of the Pentecostal church in Newfoundland, who was sitting in the galleries on what he called "this historic day," adding:

> I know that on behalf of his people, he is watching with interest this historic occasion.

Yes, and an historic occasion it was, but one whose intent will not have lasted even one decade if this resolution is passed. According to the same Pastor King who, last June in St. John's, concluded his presentation to the Standing Senate Committee on Legal and Constitutional Affairs as follows:

> The Pentecostal Assemblies of Newfoundland can state categorically and without fear of contradiction that the Pentecostal class of persons does not support an amendment to Term 17 as proposed by the Newfoundland government. To effect this change is to do so in violation of the express wishes of the Pentecostal class.

In the Senate, Senator Lewis, speaking for the Liberal Party, urged speedy approval of the resolution, saying:

> Surely it is time to rectify the situation as desired by the Pentecostal Assemblies and to enshrine their rights in the Constitution.

All this occurred, honourable senators, less than 10 years ago, when Parliament voted unanimously with the Newfoundland House of Assembly in effect to reconfirm the unique form of education in Newfoundland as it had been originally nearly 40 years earlier.

What has happened in less than 10 years for such an historic occasion, a reconfirmation of spiritual values, believed then to have been very important, even crucial, to have suddenly become irrelevant to the point where, as Senator Rompkey said yesterday:

> ...this comes down not to a question of minority rights, but to a question of who wields power over education in Newfoundland.

Such brutal frankness would be refreshing were it not so frightening.

Senator Rompkey went on to state:

> The legislature should be pre-eminent. That is clear in any democracy, whether it be the country or a province.

A statement like that only shows a disturbing disregard for the basic law of this land. In our country, in all provinces as in his, it is not the legislature which is pre-eminent; it is the Constitution Act of 1982.

Simply put, Parliament accepted, wittingly or not, to submit much of its former supremacy to that of the Constitution. It is in this context that we must discuss Term 17. To go beyond it, invoking slogans that are no longer valid is not germane to the debate except to reveal the weakness of the arguments of some who support the resolution.

• (1530)

We are now being asked to reverse course, to dilute protected rights without the support of the minorities affected and so put them at the mercy of provincial legislation by removing their rights from the comforting protection of the Constitution.

There are some who will claim that I am exaggerating, even ignoring the assurances to the contrary repeatedly given by supporters of the resolution. I do not doubt the sincerity of these assurances, but they are only valid as long as those who make commitments are in a position to honour them. These assurances do not bind those who follow, certainly not the way assurances outlined in the Constitution are able to do.

Let me quote from a speech given in the House of Commons by the Member of Kingston and the Islands on June 3 of this year. In this speech, you will find reason enough to justify the many concerns over the status of minority rights in Newfoundland, should the resolution be approved without change.

Mr. Milliken said:

> I know some of my colleagues on all sides of the House have argued that minority rights are somehow being diminished by this resolution. It may be that over a long period of time there would be a diminution of minority rights by virtue of the passage of this resolution.
>
> All the denominational schools are being treated the same way by the resolution. They are all having their status slightly altered by this resolution but there will remain denominational schools in Newfoundland after this resolution is adopted until such time as the assembly changes those rules.

Mr. Milliken goes on to say:

> It has not indicated a desire to do so. That is something the electors of the province of Newfoundland can deal with when they elect their members to their House of Assembly. They are the ones who should have the responsibility for education in that province and they will have to accept that responsibility. The electors will have to take their responsibility by electing the right people to the legislature.

Honourable senators, that statement goes to the heart of the concerns expressed repeatedly over the past few months. That it was not challenged is revealing but not surprising. At the outset, the House of Commons agreed to spend as little time on the resolution as was considered decently proper. As the member for Notre-Dame-de-Grâce, Warren Allmand, put it:

> This is a serious constitutional amendment which removes certain entrenched rights. Yet we are dealing with it in two days. This motion was tabled in the House last Thursday, only four days ago. The debate started on a Friday, a short day when most members are on their way home to their constituencies. It has resumed today and we are to vote tonight; only two days on an important constitutional amendment which could have implications for other provinces.

Mr. Allmand continued:

> After all these years why do we have to proceed with this important motion in just two days without public hearings?

Is it not ironic that the elected house, with full powers to determine the fate of a constitutional amendment, gave this one such short shrift, while the reviled appointed house has given it thoughtful and measured consideration, the least one should expect when dealing with a basic law that guides all legislative business?

Some Hon. Senators: Hear, hear!

Senator Lynch-Staunton: One explanation for the government's near indifference to Term 17 may lie in its determination to stay away from the Constitution as much as possible. One can understand that.

For decades, we seem to have read and heard of little else but the Constitution. In the last 15 years alone, we have had the lengthy dispute over patriation. Then we had conferences and debates leading to the Constitution Act of 1982, then the Meech Lake Accord, then the Charlottetown proposals and, finally, the referendum.

Liberals made it clear as soon as they were elected that they would do everything possible to avoid reopening the Constitution. They felt it was too risky, even politically suicidal, and that Canadians wanted their new government to concentrate on more immediate bread-and-butter issues, in particular, jobs.

The provinces fell in step, as was demonstrated only last June when it was agreed that the requirement to review the amending formula by April 1997 could be met by the Prime Minister and the premiers stating, in the time it took Premier Bouchard to go to the washroom and return to the conference table, that the amending formula study requirement had been met simply by acknowledging the obligation to meet it.

Any government, however, that thinks it can postpone the search for solutions that can only be reached by reopening the Constitution is deluding Canadians and accentuating the problems that cry out for constitutional solutions.

Constitutional preoccupations are a unique feature of our political landscape. This country was put together gradually, even awkwardly, through various acts of the British Parliament, culminating in the British North America Act of 1867. Federal and provincial fields of jurisdiction were defined by amendments to the BNA Act and Privy Council decisions. Some semblance of this country's independence was only granted through significant events such as the Statute of Westminster in 1931 and the elimination, in 1949, of the judicial committee of the Privy Council as our final court of appeal.

Finally, in 1982, Canadians could claim a constitution of their own making, which, for all intents and purposes, ended one period of wrangling and rancour over constitutional issues only to begin another. There is no way that by ignoring the Constitution preoccupation with it will fade away.

I can think of no other country that has engaged in seemingly endless debates over its basic law for such a long time as has Canada. I can also think of no other country that has developed constitutionally as peacefully as has Canada, and herein is what sets us apart from the world. Whereas elsewhere constitutions have followed wars, revolutions, breakups of empires and many other historic events leading to the loss of lives, Canada is unique in that it has engaged in evolution, not revolution. This has resulted in what is today one of the oldest constitutions in the world. Despite all its imperfections, ours is one that works. What a tribute to those who, for over 130 years, have allowed this to happen.

Evolution, by its very nature is lengthy and seemingly endless. What a small price to pay as opposed to those countries whose constitutions have resulted from social upheavals and human sacrifice. Ours is not only the most peaceful way to tailor a country's basic law, it is, in fact, the most efficient. The very nature of our constitutional process requires that it be an ongoing one. While governments can interrupt it temporarily, they cannot delay it indefinitely.

The Prime Minister has stated his preference of meeting certain obligations by means other than the reopening of the Constitution. The lending of the federal veto to five regions and the recent recognition of Quebec as a distinct society through acts of Parliament are the most obvious moves in this direction. However, they can be annulled by future parliaments and so lack the legitimacy attached to a constitutional guarantee.

The government has announced its intention to eliminate federal-provincial irritants through bilateral or multilateral agreements, as the case may be, hopefully obviating the necessity of turning to the Constitution to do so.

In Newfoundland, attempts have been made to strike a framework agreement that would allow the Newfoundland government's reforms to be implemented without a constitutional amendment.

Senator Rompkey: That is not true.

Senator Lynch-Staunton: The Minister of Education has categorically stated that an agreement between the government and the churches is impossible. Yet the archbishop of St. John's, in a letter to the Prime Minister of Canada, dated May 17 — a letter to which, by the way, he has yet to receive a reply — claims the exact opposite, and it even claims that the same Minister of Education supports his opinion.

At no time does the archbishop agree that a framework agreement can only be arrived at if an amended Term 17 is passed. On the contrary, in the same letter to the Prime Minister, he writes:

> In my letters, I also advised Premier Tobin we felt that such an agreement could be reached and implemented without the need for any amendment to Term 17 of the Newfoundland Terms of Union. However, I did state that in the context of an overall agreement, we would not oppose an amendment to Term 17 mutually agreed upon between the government and ourselves provided it retained constitutional protection for the continued existence of viable Catholic schools.

The least I can say is that the openness of the archbishop impresses me more than the inflexibility of the Newfoundland government.

• (1540)

Before ending, I cannot help but comment on Senator Rompkey's claim yesterday that, if the "where numbers warrant" amendment is passed, it will have the effect of preserving the status quo. The Canadian government publication, obviously issued with the approval and support of the government of Newfoundland, entitled, "Term 17, Towards a Modern School System for the Children of Newfoundland and Labrador," indicates a "where numbers warrant" commitment will be part of the changes envisaged in the school system, as it was given during the 1995 referendum campaign. On page 6 of the publication, one reads:

> However, schools for specific religious denominations will continue to exist where they are requested by parents, and where the number of students is sufficient for a viable school.

On page 21, there is the question:

> Will there be single denominational schools in Newfoundland? If so, under what conditions?

The answer is:

> Yes. Under Newfoundland and Labrador's legislative proposals, single denominational schools will exist where requested by parents and where there are sufficient students for a viable school.

Senator Berntson: That sounds like "where numbers warrant."

Senator Lynch-Staunton: On page 22, it reads:

> In addition, where numbers are sufficient, schools can be established to accommodate those who desire to have their children educated in a school operated by their own religious denomination.

All Senator Doody's amendment does is confirm what the Newfoundland government has indicated it is prepared to do. I wonder why Senator Rompkey does not welcome this assurance and why he does not accept such an assurance as part of the resolution. Why he does not do so is as perplexing as it is contradictory.

I can end in no better way than by quoting from Senator Kirby's powerful presentation, one paragraph of which, to me, summarizes the anxieties of those opposed to the resolution. He said:

> ...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...in the constitution ...without any proof being given of the... necessity of taking away minority rights.

Let me remind you again, colleagues, of Mr. Milliken's blunt assessment, which was confirmed by Senator Rompkey yesterday:

> They...

That is, the denominational schools.

> ... are all having their status slightly altered by this resolution but there will remain denominational schools in Newfoundland after this resolution is adopted until such time as the assembly changes those rules.

That, in a nutshell, is what "subject to provincial legislation" is all about.

We cannot intervene in the process of change in Newfoundland. We cannot, in effect, but give advice on a constitutional amendment. The advice being given through Senator Doody's amendment and Senator Cogger's subamendment is straightforward. The Senate fully sympathizes with and supports the educational reforms envisaged by the Government of Newfoundland but deplores a proposal that would see these reforms realized through the diminution of certain rights affirmed in 1949 and reconfirmed again in 1987. It has yet to be shown that the reforms cannot be achieved through continuing negotiations and mutual agreement.

However, should Newfoundland persist, with the support of the Government of Canada, the resolution should be amended, as proposed by Senators Doody and Cogger, in order to keep certain basic safeguards, which, if not protected by the Constitution, may well be lost in the years ahead.

I urge a vote in this direction and, following it, that the House of Commons and the Newfoundland House of Assembly be so advised so that they may be made aware that the Senate is only reflecting preoccupations of minorities who, without their consent, are seeing certain safeguards taken away from them, safeguards that were agreed to unanimously in 1949 and again as recently as 1987.

By doing so, by amending the resolution, I am sure that even Senator Milne will in time come to agree that the Senate, rather than inducing a constitutional crisis, may well have avoided one.

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, today we are coming to the end of a process that began almost six months ago, on June 6, when I moved the adoption of a resolution to amend Term 17 of the Terms of Union of Newfoundland and Labrador with Canada. It is fair to say that much has occurred in the intervening period. I should like to spend a few moments reflecting on the process that has led us to the decision that each of us will make this afternoon.

We have had a vigorous debate in this chamber, where both the opponents and the proponents of this resolution have put forward their respective positions with great passion and conviction. The speeches that have been made this afternoon have indicated that as forcefully as the ones that have gone before them.

We had excellent hearings in our Legal and Constitutional Affairs Committee. I wish to express my personal thanks and appreciation to all members of that committee, to all of the others who took part in the committee, to Senator Rompkey and, most particularly, to the chairman, Senator Carstairs, and the co-chairman, Senator Doody, for the excellent work they did in ensuring that interested individuals and groups were given the opportunity to be heard and to provide us with first-rate analyses of the issues. I do thank particularly both Senator Doody and Senator Carstairs for their efforts in organizing those committee hearings.

The committee hearings were held here in Ottawa and in St. John's, Newfoundland. Senators heard from over 33 witnesses, including the Minister of Justice and Attorney General of Canada, the Honourable Allan Rock, and the seven religious denominations directly concerned. They also heard from constitutional experts, from other witnesses representing teachers and school trustees, from various associations, politicians of all stripes, the aboriginal community and private citizens. These hearings were televised, and they found a wide and, I am sure, interested audience not only in Newfoundland but all across the country.

When I moved the adoption of the resolution to amend Term 17, I believed that it merited the support of the Senate, a view I still hold today. However, I also very much supported the committee hearings so that those with special interests on the issue could be heard, and so that all of us would have a better opportunity to inform ourselves prior to making our own decisions.

Honourable senators, Term 17 was the subject of a free vote in the House of Assembly of Newfoundland and Labrador. That process was followed by the Government of Canada in the House of Commons, and we on this side will respect that process today because of the nature of the issue and because of the deep personal responses that it produces.

There was a question by Senator Prud'homme as to whether there would be a vote. I wish to assure him that that was never at issue in my mind, nor would it ever be when it comes to carrying out the duties of members of the Senate.

The Senate has taken time and care with the issue, and we have learned a great deal more because of it. We have all heard about the history and the unique character of the Newfoundland school system. Six denominations — Catholic, Presbyterian, Anglican, Seventh-day Adventist, Salvation Army and the United Church — were granted protection under the Terms of Union of the province in 1949. We have been told how changes to that system have been debated for generations. We learned about the 1967 Royal Commission on Education and Youth, which in 1969 led the Anglican, Presbyterian, Salvation Army and United Church denominations to come together to form an integrated school system.

• (1550)

We have passed as a Parliament an amendment in 1987 to the same Term 17 to extend protection to the Pentecostal Assemblies. We have heard how the 1992 Royal Commission on Education recommended further changes, and how much was achieved in a consensual fashion through negotiation among the various participants. Honourable senators, there is nothing precipitate about this issue. The Government of Newfoundland and Labrador has been working on it for a long time.

However, when it became clear, after years of discussion and negotiations, that there remained issues that simply were not being resolved through more discussion, the government of Newfoundland and Labrador put the question of reform of the education system directly to the people of the province in a referendum. This was held on September 5, 1995. The people of Newfoundland and Labrador voted for the Government's proposal by a margin of 55 per cent to 45 per cent. The following month, October 31, 1995, the Newfoundland and Labrador House of Assembly adopted the resolution that we have before us by a 31 to 20 margin in a free vote. All three party leaders voted in favour of the resolution.

In February, 1996, the new Government of Newfoundland and Labrador won a large majority on a platform that included a pledge to proceed with educational reform of denominational schools. Following that election on May 23 of this year, the House of Assembly reconfirmed its position when it unanimously adopted a resolution stressing the importance of adopting changes to Term 17, and urging the Parliament of Canada to act quickly.

Honourable senators, that unanimity among the political parties in the House of Assembly was underscored by the appearance before our Senate committee of Mr. Loyola Sullivan, the Conservative Leader of the Official Opposition in Newfoundland and Labrador, and Mr. Jack Harris, the Leader of the province's New Democratic Party, both of whom urged passage of the amendment. When he appeared before our committee in Ottawa as well, Mr. Len Williams, the chairman of the 1992 royal commission, said:

> I urge that you accept that this is a logical, sequential, and historical step in Newfoundland's education and pass this amendment.

Honourable senators, that was the process that has brought us here this afternoon. There is absolutely no doubt that this is a highly charged issue. That has been reflected in speeches on both sides of this chamber. We are dealing with combined questions of religion, of education, and of minority rights and privileges. I cannot think of many subjects with as profound an influence on families and their children, and on the society in which they live. There is always anxiety, even fear, surrounding change, particularly when it affects one's children. Those honourable senators who travelled to Saint John's with the Standing Senate Committee on Legal and Constitutional Affairs saw for themselves how deeply emotions ran on both sides of the issue.

Honourable senators, we have a request before us from the Newfoundland and Labrador legislature for constitutional change. We have an obligation to treat that request with care and respect, as we would and have done with constitutional requests from other provinces, including the province of Newfoundland earlier, as I mentioned. The speeches of senators who participated in this debate indicate that they have taken this issue very seriously.

Like it or not, honourable senators, we cannot delegate our responsibilities, nor should our actions be conditional on the approval of any particular group or organization. We are an independent legislative body, and our job is to make decisions based on our evaluation of the merits of what is before us. That evaluation must be based on an examination of all competing interests, including the interests of society as a whole.

Honourable senators, we have a responsibility to assess the variety of opinions and commitments that have been expressed, and decide for ourselves whether we believe minorities will continue to be protected under the amendment to Term 17. Will they be properly protected in an education system that will be developed to offer the very best possible opportunity to those who depend upon it?

Given human nature, it is difficult to imagine that any proposal to amend the Constitution would slide by without dissent. Unanimity, as we all know very well, is virtually impossible among a population of 30 million people in Canada, or among Newfoundland's half a million people. If we require unanimity, we will transform our Constitution from a protective shield to a rigid strait-jacket.

I do not believe, honourable senators — and I doubt that anyone in this chamber believes — that our Constitution is inflexible. The process by which our nation can grow, develop and change must include the opportunity for our Constitution itself to evolve in order to allow our country to meet the challenges of passing decades, and to meet the challenges of a new century.

Honourable senators, the questions always must include: Are rights affected? Is it appropriate? Has it been done fairly? That has been at the heart of the debate over the wide-ranging concerns of Newfoundland and Labrador and Term 17.

We have heard a number of senators express their genuine concern about whether there really is a need for this constitutional amendment. They have pointed to the extensive negotiations that took place in the province and paved the way for a number of educational reforms. They have asked whether further negotiations could not produce all the desired reforms and thus avoid the need for a constitutional change.

However, while we might wish that discussions could replace the need for the measure before us, years of negotiations have failed to achieve a consensus. Newfoundland's Education Minister Roger Grimes, who was given the responsibility for this particular piece of legislation, explained the situation to our committee as follows:

> The difficulty is that seven groups hold rights. The government cannot strike deals with one or two and not the others. We felt we needed agreement. When we came close to agreement with one, two or more, then we were further apart on agreement with several others.

• (1600)

He went on to say:

> The framework attempt did not succeed. No agreement had been reached or signed....In the view of the government, agreement between the government and the churches is not possible and is not likely to happen in Newfoundland and Labrador in the foreseeable future.

We were told the groups could not reach a consensus after repeated effort over an extended period of time.

Honourable senators, we in this chamber were not party to these discussions. I would suggest respectfully that we are not in a position to judge how long they should carry on.

The Government of Newfoundland and Labrador and the House of Assembly, which proposed this amendment, itself took the decision that three years was extensive and that an amendment to Term 17 should proceed in the interests of improving the functioning of the education system of the province.

The proposed Term 17 will entrench the right of the seven protected religious denominations to publicly funded denominational education. Provincial legislation will apply to both interdenominational and unidenominational schools, as well as to any new schools. Indeed, paragraph (1)(*b*) of the proposed Term 17 is clear that legislation must be "uniformly applicable to all schools specifying conditions for the establishment or continued operation of schools."

Mr. Grimes explained this phrase to the committee, saying:

> Here we are taking a new approach by spelling out the rights in the Constitution itself and that the phrase "subject to provincial legislation" constitutionally binds the legislature of the province to produce legislation that is uniformly applicable. That means we cannot demand a different or a higher or a tougher standard for unidenominational schools than we can for shared interdenominational schools. It must be uniform. Everyone has been treated in the same way. The legislation must do that.

This will be guaranteed by the Constitution.

Honourable colleagues, Newfoundland schools will continue to be denominational. Though the rights and privileges that are found in the existing Term 17 are to be changed, the fact remains that the seven protected denominations will continue to have extensive rights to provide religious education, activities, observances in the interdenominational schools, and these rights are the core values of the denominational rights in our country as they have been defined by the Supreme Court of Canada. The right to unidenominational schools will be entrenched in the Constitution.

The question we must deal with this afternoon is whether the proposed amendment adequately and appropriately protects denominational rights. I know other senators obviously disagree, but I believe that it does protect those rights. Denominational rights will continue to be protected under the new Term 17.

I should like to speak about the subamendments to the proposed Term 17. Our honourable friend Senator Doody has moved a subamendment that would replace provincial authority to establish viability standards for schools with a judicially interpreted standard of "where numbers warrant."

Honourable senators, we already have heard that the House of Assembly in Newfoundland rejected this language. The Minister of Education and the leader of the provincial New Democratic Party, Mr. Harris, told our committee that it was not acceptable. Mr. Sullivan, the leader of the Official Opposition — himself a Roman Catholic, a parent, and a former teacher within the Roman Catholic system in Newfoundland — also rejected this proposal.

The right to a publicly funded denominational school is precisely the fundamental right that Term 17 would entrench. The first paragraph of the proposed amendment to Term 17 states very clearly that:

> ... schools established, maintained and operated with public funds shall be denominational schools.

This right is not subject to provincial legislation.

The second sub-amendment, proposed by Senator Cogger, urges that we replace the power "to direct" curriculum affecting religious beliefs, student admission policy and the dismissal of teachers with the phrase "to determine and direct." Several witnesses told our committee that legal experts inside and outside government agreed that these two expressions mean the same thing, that this amendment is redundant, and that it does not add any real powers or authority to those encompassed within the term "to direct."

Honourable senators, there is no unanimity on this issue among Newfoundlanders. There was no unanimity among committee members who studied the issue. There has been no unanimity evident here during the debate, and I certainly do not expect the vote this afternoon to be unanimous.

However, I hope the people of Newfoundland will know that we as senators have carefully and conscientiously studied the issue. We have tried to understand, and we have cast our votes on the basis of what each of us believes will benefit the province, its citizens, and, more important, its young people.

Honourable senators, with this vote this afternoon, we will be fulfilling our constitutional responsibilities. As the Leader of the Government in the Senate, I will be supporting this measure. Clearly, the government has offered strong support for the resolution in the House of Commons. However, I also support this resolution as an individual senator, taking personal responsibility for my own decision in this free vote. Like each of you in this chamber, I, too, have thought carefully about the complex dimensions of this request from the House of Assembly in Newfoundland and Labrador.

I should like to recall the words of a veteran colleague whom I respect a great deal, who is known here and back in his home province for speaking his mind, always in the interests of those he represents. In this debate, Senator Petten told us:

> The people of Newfoundland and Labrador are ready to move forward. We are ready to pull together. While having real respect for those who oppose this resolution, I believe the time has come to amend Term 17. The time has come to allow Newfoundland and Labrador to reform its education system. The time has come to put the emphasis on what is best for our children.

As always, I, too, respect the views of those who disagree, wherever they may sit in this chamber, but I believe that this resolution is the right thing to do for Newfoundland and Labrador, and I believe it is worthy of our support.

• (1610)

Senator Prud'homme: Honourable senators, from day one I urged my colleagues to hold hearings not only here but in Newfoundland because many people in Newfoundland have no money available to pay for the expensive trip to Ottawa.

As to voting, I am convinced that there are some people who would have enjoyed prolonging the agony by not voting. Only two days are left. However, I have heard suggestions that we could let the six months lapse.

I am content with the end result. I hope we can dispose of this matter with the amendments being defeated. Then the motion would be passed. If the amendments are carried, then the bill would be returned to the House of Commons.

I reported on the debate that took place, and I do not want to try your patience by repeating everything I told you before. I attended every minute of the debate in the House of Commons. On that Friday, at no time were there more than seven members present. As a good soldier of the Liberal Party, I remember being instructed that, when in trouble, ram it through on a Friday. It was a good reminder for me about what happens on such important issues. On the Monday, there were no more members attending, but the vote went ahead.

The Hon. the Speaker: Does the honourable senator have a question?

Senator Prud'homme: Yes, I do.

Had there been a referendum in this province, I do not think this province would be bilingual

I hope Senator Fairbairn will try to convince her colleagues. If the referendum were to carry, would she, on our behalf, urge her colleague in the other place to hold hearings?

Senator Fairbairn: Honourable senators, I will send the words of Senator Prud'homme to colleagues on the other side.

Senator Murray, more than others, would appreciate that we do our best to have good connecting links between the two houses of our Parliament. Sometimes we meet with more success than at other times.

My tenure in this chamber is shorter than that of some other senators, but, when all is said and done, I believe we have done a credible job of conducting our own debates, our own committee hearings, and our own reports in our own way. I suggest it is difficult to reach back across the corridor to another chamber. However, as long as I am standing here, I will do my best to argue for the Senate's ability to continue its studies and its debates in order to make its own decisions in the most informed way it possibly can.

Hon. P. Michael Pitfield: Honourable senators, the federal government is asking Parliament to do something that raises fundamental questions. No one should believe we are talking about simply an issue of denominational education in Newfoundland, important as that may be. In fact, what is at issue here is a profoundly important question that will be of much concern to Canadians everywhere. That question is how much — or perhaps how little — our citizens can depend upon the federal government to fulfil its responsibilities as guarantor of the Constitution.

Senator Kirby explained in his remarks in this chamber a few weeks ago that this is a debate concerning the fundamentals of human rights. He demonstrated that the federal government is avoiding its duty to protect those rights. He described how the federal government tends to see things in terms of the powers of the majority. He delineated a government policy to substitute the appearance of fairness for the substance of justice.

The responses made by critics to Senator Kirby's arguments are interesting because they demonstrate so clearly the truth and the strength of his analysis. Senator Kirby's critics, like the report of our own committee, tend to keep returning to justification of the powers of the majority. They do not really address the questions of the protection of the minority.

No one pretends that the issues before us are not complex, but Canada is a country of minorities. Our Constitution is replete with difficulties, some of them older and involving more people even than Term 17. In these circumstances, it is the duty of our federal government to keep searching for solutions. That, we know, besides being a thankless task, is, nonetheless, an important aspect of what Canada is all about.

I concur with Senator Kirby's five points concerning the issues underlying Term 17. His remarks are an excellent statement of our citizenship. He deserves the attention and reflection not only of students and young people but, more particularly, of some of us more jaded and tired older types. In Canada today, minority rights, whether of groups or of individuals, are especially important and sensitive matters. I suspect that is, in part, the reason why federal and provincial authorities in this matter are prepared to damn the torpedoes and cry, "Full speed ahead!" It is as if we can sweep the dilemma under the rug.

• (1620)

The issue will not be swept under the table, not in Term 17 or elsewhere. Its implications cry out in their uncertainty. Young people must not be handed this kind of solution as their inheritance. Canada cannot find harmony by denying that problems exist. Honourable senators cannot begin to tackle those problems without a clearer sense of our responsibilities with respect to them.

There is no great mystery to the Constitution in this matter. Of all its functions, the Senate has a special role to play in relation to federal-provincial matters. At the very least, the Senate is witness to the Constitution. To vote in this matter at the end of today implies that each of us has made fundamental judgments with respect to the nature of our government, the purpose of our federalism and, indeed, the functions of the Senate itself.

It is not for us to find a solution to the problems underlying Term 17. That is not our place. We do have a judgment to make as to whether undertakings have been observed, minority rights protected and solemn agreements honoured. To me, the truth is undeniable and the duty inescapable.

I will not support the resolution and to this end, under the circumstances, I will support the proposed amendments.

The Hon. the Speaker: Honourable senators, if no other honourable senator wishes to speak, the matter is considered debated. I will interrupt the proceedings at 5 p.m., according the order of the Senate, read the questions then before the house and after the bell proceed to a vote.

FIRST NATIONS GOVERNMENT BILL

POINT OF ORDER—DEBATE ADJOURNED TO AWAIT SPEAKER'S RULING

On the Order:

> Second reading of Bill S-12, providing for self-government by the first nations of Canada.—*(Honourable Senator Tkachuk)*

Hon. Richard J. Stanbury: Honourable senators, I rise on a point of order. There is a procedural matter that has been discussed several times in relation to the various elements of this bill in its various appearances. I think all senators would like to have that matter settled before this matter goes on to to committee, if that is what is to happen.

Honourable senators will remember that this bill has already been before us on two other occasions, Bill S-10, the subject-matter of which was discussed at length in the committee, and Bill S-9 which received first reading but disappeared from the Order Paper because of the effluxion of time.

Senator Tkachuk has now reintroduced it as Bill S-12. The bill may well have merit. However, in May of 1995 there was discussion as to whether Bill S-10 was properly before the Senate because it might be regarded as a money bill, which requires a Royal Recommendation.

That question was not determined at that time. Before we get into consideration of the bill in committee, we should have a ruling of the Speaker as to whether the bill is properly before the Senate. Then, if it is proper to proceed, we can do so without that doubt hanging over our heads.

As all senators are aware, rule 81 of the *Rules of the Senate* of Canada provides that:

> The Senate shall not proceed upon a bill appropriating public money that has not within the knowledge of the Senate been recommended by the Queen's representative.

It is also a well-established convention of Parliament that bills requiring an expenditure of public funds cannot be introduced in the Senate. Bill S-12 clearly has significant financial implications for the federal government. It would result in the expenditure of federal funds.

Clauses 16 to 27 of Bill S-12 call for the transfer of reserve lands to First Nations that choose to opt into the legislation. Before such transfers could occur, however, the government would have to undertake surveys to ensure the accuracy of the boundaries and to define third-party interests. Depending on their size and complexity, these surveys could cost at least $100,000 each. With more than 600 First Nations, and more than 2,300 reserves across Canada, the price tag could be significant.

To discharge its obligations to the First Nations, and to ensure that lands transferred are clear of environmental issues, the government also has an obligation to conduct an environmental audit before reserve lands could be transferred. Each of these phase I audits could cost approximately $50,000. That does not include any remedial action thatmight be required. Again, the cost would be most significant.

Bill S-12 would also extend to Indian corporations the current tax exemption is currently available to Indian individuals under the Indian Act. This change would immediately eliminate an unknown yet significant amount of corporate tax revenue to the federal and provincial governments.

Honourable senators, it would be unrealistic to assume that there will be no costs involved in implementing the inherent right of aboriginal self-government as outlined in this bill. There will certainly be costs.

I remind honourable senators that on February 27, 1991, the Speaker ruled out of order Bill S-18, which was another bill dealing with aboriginal self-government. He found it to be a money bill, which lacked the necessary Royal Recommendation.

I believe this bill is also a money bill and, as such, cannot be initiated in this chamber but must be commenced in the other place.

I want to make it clear that I am not in any way contesting the merits of the bill, which may be substantial. However, I am concerned that we deal with this apparent procedural obstacle before we put witnesses, staff and the entire Senate to substantial effort and expense.

Hon. David Tkachuk: I would like to make a few comments on the point of order raised by the Honourable Senator Stanbury.

I anticipated this point of order, of course. There is no end to the number of papers and speeches on this issue of Royal Recommendations or money bills. In fact, some of the best pieces I have read are from former Senators Frith and MacEachen and Senator Molgat, who is presently our Speaker.

I might add, Your Honour, that I thought your speeches were the best. I still consider myself a new senator and I am not an expert on procedure. However, I think I am a parliamentarian, not an elected one, but a senator. There is much resting on you, Your Honour, in terms of this discussion on Bill S-12.

• (1630)

Our concern goes beyond Bill S-12; it extends to the future of this institution called the Senate.

We have often been called irrelevant and ineffective. Honourable senators, if we narrow the latitude in introducing senators' bills for discussion into the Senate and Parliament, we will become irrelevant and ineffective. The narrowness of the decisions will cause even bills, such as those of Senator Kenny's, which went through this house, not to be discussed at all at second reading.

I would quote from a letter from Raymond du Plessis, Q.C., the former Law Clerk and Parliamentary Counsel to the Senate, on his description of what is not a money bill. He writes:

> In the view of this office, a bill that imposes new duties on a department of government without providing for the funding necessary to carry out those duties would...depend upon a future appropriation by Parliament (i.e., a "money bill") in order to be effective. It would be the future appropriation that would cause a new charge to be made on the Consolidated Revenue Fund and the bill providing for that appropriation would clearly come within the meaning of the rule in section 53. It would also, for the same reason, require a recommendation from the Crown under section 54.

He then quotes Beauchesne's as follows:

> A bill, which does not involve a direct expenditure but merely confers upon the government a power for the exercise of which public money will have to be voted by Parliament, is not a money bill, and no Royal Recommendation is necessary as a condition precedent to its introduction.
>
> A bill, designed to furnish machinery for the expenditure of a certain sum of public money, to be voted subsequently by Parliament, may be introduced in the House without the recommendation of the Crown.

He cites sections 613 and 614 of Beauchesne's 6th edition, under the heading "Legislation not requiring Royal Recommendation."

What does Bill S-12 do? I quote from James W. Ryan, Q.C., legislative consultant to the Law Clerk's office, who drafted Bill S-12. He states:

> It would give a defined group of natural persons the means to establish themselves as a body politic with corporate-like identity and the power to govern themselves under law. This is not in kind different from the creation of a body corporate to operate a business, or to govern a municipality or a university or to manage the temporal affairs of a church.

Therefore, that aspect of Bill S-12 should not attract objections any more than the incorporation of a university would if no public funds were to be involved.

We all know that we should not impose on the Crown for cash or spend the money of the Crown; only the executive can authorize that. They narrow the rules in that other place for private members basically because they have access to cash. You cannot have 295 members grovelling around for left-over money at the end of the year — only bureaucrats have the power to do that — but we in the Senate know we have more latitude. I firmly believe Bill S-12 meets the Commons' test. We cannot worry about their business; they will decide that.

For all our enlightenment, we should know where the Royal Recommendation comes from. It was Lord Durham who observed with some dismay that in the assembly of the colonies members had the right to introduce appropriation legislation, so, of course, they did. The following is a quotation from the *Canadian Parliamentary Review*, summer issue, 1994, by R.R. Walsh, quoting Lord Durham:

> It is necessary that I should also recommend what appears to me an essential limitation on the present powers of the representative bodies in these colonies. I consider good government not to be attainable, while the present unrestricted powers of voting public money, and of managing the local expenditure of the community, are lodged in the hands of the assembly. As long as a revenue is raised which leaves a large surplus after the payment of the necessary expenses of the civil government, and as long as any member of the assembly may, without restriction, propose a vote of the public money...

He continues:

> ...Frequently sacrificed in that scramble for local appropriation, which chiefly serves to give an undue influence to particular individuals or parties.

Fellow senators, that is not what we are doing here. As I said earlier, it is a larger issue. I am appealing to all of you, and especially to you, Your Honour. I have read all your speeches so I know we are on the same ground here. You were saddled with making a ruling on a point of order raised here today. If we continually narrow our focus, we will make ourselves irrelevant. While we may be kept alive by the machinery of government, there will be no heart and mind because we will not be able to move bills in which we firmly believe. We know that when this bill passes, it will have no effect on the public purse of the Government of Canada. John A. Macdonald said that the Senate was a cauldron where he poured legislation to brew awhile, but it was never said we could not pour our own brew. Let us brew here to educate, to learn and contemplate, away from the overheated passions in the other place.

Let us assume we pass Bill S-12. Have we done one thing to overstep our constitutional bounds? Will we break one rule of this place? Will we seize upon the money of the Crown and spend it? No. This bill will then go to the other place and they will deal with it. If it is seized upon by the executive, so be it. If it is moved by a member, the Speaker there will rule upon it. That is their business. If they have narrowed the focus of private members such that they will rule it out of order, that is their problem. If they wish to become eunuchs, they can become so, but not I. Therefore, I ask His Honour to rule wisely, to give the latitude intended by our founding fathers to this place, to allow us to do our work rather than create mischief.

Let us enjoy ourselves and pursue issues and not just respond to that other place.

Hon. Noël A. Kinsella: Honourable senators, I yield to Senator Cools.

Hon. Anne C. Cools: Honourable senators, I should like to add a few words to this debate. I have not had the time to do the quality of preparation that I should like to have done, so I would ask honourable senators' indulgence.

I would begin by clarifying what I believe Senator Stanbury is asking. As I understand it, Senator Stanbury is asking the Speaker of the Senate, Senator Molgat, to make an adjudication under section 53 of the Constitution Act, l867.

Section 53 of the Constitution Act basically states that bills for appropriating any part of the public revenue or for imposing any tax or impost shall originate in the House of Commons.

Sections 53 and 54, honourable senators, are the two sections of the Constitution that limit the powers of Parliament in many of these regards. In point of fact, section 54 is a limitation on the House of Commons requiring that house to have Royal Recommendations on appropriation bills. Therefore, in point of fact, the only issue before the Senate is section 53.

Honourable senators, I have great concern that we are continually calling upon the Speaker of the Senate to make adjudications and determinations that, to my mind, rightfully belong with the Senate as a whole and with senators. It is my intention to put a few of these statements on the record in order to assist Senator Molgat, who I know, has had concerns about many of these issues over many years.

I should now like to speak to the issue of money bills. In so doing, I will refer to a particular study on senator's rights in financial matters by the Standing Senate Committee on National Finance. I would like to read from portions of the testimony contained in Issue No. 14 of the committee's proceedings, dated Thursday, October 5, 1989. First, I should like to read a question that was put to a witness, a Mr. Graham Eglington, whom the late Senator Eugene Forsey described as the finest constitutional lawyer he had ever met. Before this committee, Graham Eglington gave extensive, exhaustive and excellent testimony on these very issues. At the completion of Mr. Eglington's testimony, Senator Stewart put the following question to him:

> I have some questions. Very often, when discussions or controversies commence here in Ottawa about appropriation or even taxation, we hear the expression "money bill". When I go through the Constitution Act of 1867, I do not find that expression used in any particular section. It is true that, after section 52, there are five sections, namely 53, 54, 55, 56 and 57, which are preceded by the italicized words *"Money Votes; Royal Assent*". As far as I can ascertain, the expression "money votes" in that heading refers to the sections to which our witness has drawn our attention, namely sections 53 and 54.

Senator Stewart continued:

> Of course, when we inspect those sections we find that there is no reference to a money bill as such. So I am driven to conclude that the expression "money bill" is really an expression which has its origins — or at least its immediate origins — in an English statute, being the Parliament Act of 1911—

That act was sponsored by the then Prime Minister of the U.K. Herbert Asquith and his minister David Lloyd George in their major constitutional effort to disable the House of Lords.

Senator Stewart went on to say:

> —and that when we use it here in Canada we may well be misleading ourselves. Speaking technically, is the expression "money bill" helpful in understanding the constitutional arrangement affecting the Parliament of Canada?

Mr. Eglington responded:

> The answer is no, it is not helpful at all. The phrase "money bill" is used in different jurisdictions to mean different things. The only place where I know it is actually defined is in the Parliament Act where there is a definition for purposes of the United Kingdom defining those particular financial measures which can be presented for Royal Assent without the assent of the House of Lords....
>
> In the Canadian context, I do not think it serves any useful purpose at all. It is used loosely, I think, to cover taxing measures and appropriations, but I am sure that those who use the phrase probably have different meanings, one from the other, in their own minds. Thus it is probably best avoided.

So we go to the United Kingdom's Parliament Act, 1911, and find the only place that the term "money bill" has any positive meaning. Section 1.(2) of that act defines a money bill exactly for specific uses of the House of Commons of England and section 1.(3) describes the process of the determination of a money bill. I shall put that on the record for His Honour's consideration.

Section 1.(3) states:

> There shall be endorsed on every Money Bill when it is sent up to the House of Lords and when it is presented to His Majesty for assent the certificate of the Speaker of the House of Commons signed by him that it is a Money Bill. Before giving his certificate, the Speaker shall consult...

And it goes on to state how the Speaker of the House of Commons of the United Kingdom goes about the business of determining a money bill.

Honourable senators, this chamber has studied extensively the issue of money bills. In the context of the Constitution of Canada and the practices of the Parliament of Canada, we have concluded that the term "money bill" is neither helpful nor useful.

The Speaker of the Senate, on several occasions in the last little while — most recently a few weeks ago on Bill C-42 and some months ago on Bill C-28, the Pearson Airport Agreements bill — has been asked to make an adjudication on what are points of law and what are points of the Constitution. At that time, His Honour declined to appropriate the role of the Senate as a whole in making that adjudication. On May 8, 1996, His Honour stated in his ruling, as recorded at page 287 of the *Debates of the Senate*:

> ...As citation 317(2) of *Beauchesne's Parliamentary Rules & Forms*, Sixth Edition, explains on page 96:
>
> A question of order concerns the interpretation to be put upon the rules of procedure...

He continued:

> To have me consider such a claim, let alone possibly oblige me to determine whether it is true or not, would involve the Chair, *ipso facto*, in constitutional and legal matters. As Speaker, I have no authority or right to look into such questions. The Canadian parliamentary authority, Beauchesne's, is quite categorical on this. Citation 324, at page 97 of the sixth edition states:
>
> The Speaker will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or privilege.

His Honour concluded:

> Whatever the merits of the case....They are not issues on which I can rule as Speaker of this house.

Honourable senators, I apologize for my somewhat extemporaneous remarks. However, I would invite all senators to consider another occasion when the issue of the Senate's rights in many of these matters was carefully considered. That occasion was 1949. I am holding in my hands a copy of a May 1918 document called the "Second Report of the Special Committee on the question of the rights of the Senate respecting Financial Legislation (Money Bills)," known as the Ross report, which is found in the *Journals of the Senate*. I would invite His Honour to contemplate that as well.

In conclusion, the office of the Speaker of the Senate of Canada is a very special office. It is quite different from the Speaker of the House of Commons. I wish to invite senators, at some time, to contemplate the differences.

There are some important issues at stake here. The issues, which are emerging more frequently as time passes, are: What are the individual rights and privileges of individual senators and members of Parliament to move initiatives through their respective chambers, and has government business taken total domination of both chambers?

The Speaker of this chamber, who holds a higher office than that of the Speaker of the House of Commons, is charged with protecting the rights and privileges of the institution as a whole and, in addition, with upholding the rights of the individual members of Parliament. I call upon the Speaker of the Senate, when he addresses these issues, to take that factor into consideration. It is the duty of the Speaker of the Senate to be the first defender of the rights and privileges of individual members of Parliament, particularly senators.

• (1650)

Honourable senators, it is becoming quite clear to me that the time is coming for this chamber, or some senators, to undertake serious studies on this subject-matter as we are running aground very quickly on many of these profound issues.

I thank honourable senators for their attention. As I said before, these statements are quite extemporaneous. I apologize for the lack of my usual voluminous preparedness.

Senator Kinsella: Honourable senators, like Senator Cools, I have not prepared any documentation. I do not happen to have that 1948 citation with me. I listened carefully to what the Honourable Senators Cools and Tkachuk have said, as well as to the points of order raised by the Honourable Senator Stanbury.

If I understood correctly the point of order raised by the Honourable Senator Stanbury, he raised two issues. One relates to rule 80 of the *Rules of the Senate*, which provides:

> When a bill originating in the Senate has been passed or negatived a new bill for the same object shall not afterwards be originated in the Senate during the same session.

Senator Maheu: Rule 81.

Senator Kinsella: On the point to which Rule 80 relates, the fact that we had this subject-matter under the guises of Bill S-10 and Bill S-9 is not the objection at all.

Senator Stanbury: No.

Senator Kinsella: Let me turn to rule 81 of the *Rules of the Senate*. I think an important procedural matter has been raised.

The Honourable Senator Stanbury drew our attention and the attention of the Speaker to clauses 16 to 27 of Bill S-12, after which he made the argument that he believed this bill constituted a money bill.

I quickly looked through the bill, and my eyes fell upon clause 12. I would draw the attention of His Honour to a different clause of the bill from the one mentioned by Senator Stanbury.

Clause 12 reads:

> "Every...tax...imposed under a law of the First Nations..."

My question is whether that clause is attempting to give power to tax. The power of taxation, I would suspect, is within the rubric of what constitutes an appropriation of public money. It is therefore quite distinct from a supply bill which, of course, is what is provided for in clause 22. I simply draw the attention of the Speaker to that provision of clause 12.

As well, honourable senators, I would draw your attention to the definition of "money bill" as provided on page 751 of Erskine May, Twenty-first Edition. Therein is found a discussion of what the Speakers in the House of Commons, whether here or at Westminster, would do.

"Money bill" is defined as follows:

> ... a public bill which in the opinion of the Speaker —

always referring to the Speaker of the House of Commons —

> contains only provisions dealing with any or all of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation;

Honourable senators, I merely wish to underscore the point that we must consider the taxation question. I hope that will be of some assistance to the Speaker in making his ruling.

Senator Stanbury: Honourable senators, I would thank the Honourable Senator Kinsella for his remarks. I had not noticed clause 12 of the bill, which I think is important in the argument. I was well aware of Senator Tkachuk's previous interventions. I also appreciate the remarks of Senator Cools. However, I point out that we are talking here about a procedural matter, not a constitutional matter. Therefore, I think it is well within the jurisdiction of the Speaker.

The other reason that I drew the attention of the Speaker to this matter is that it was discussed when Bill S-10 was on the Order Paper. Various members of this chamber, including Senator Berntson, Senator Gauthier, Senator Stewart and others, expressed their views, but there was never a decision taken by the Speaker as to whether the bill was a "money bill," to use the general term. I felt it was important for all senators that a determination be made before we embark upon another, possibly lengthy, discussion in committee.

Senator Tkachuk: Senator Stanbury raised two points. First, he talked about the business of incorporation and taxation. The Indian Act already provides for no taxation for individuals. According to Bill S-12, only the aboriginals on that reserve can be part of that corporation. There is therefore no tax or income tax consequence to the Government of Canada or to anyone. It is a way to organize and protect themselves from liability.

With respect to the question of taxation, it is the nature of organized bodies that they be funded. Some bodies fund themselves by imposing an impost on their members or by taxing them, as in the case of municipalities, for example. However, Bill S-12 would not impose any taxes at all. Rather, it would recognize the legislative jurisdiction of the Indian community to raise money by way of taxes and other assessments. The power to tax arises from the Indian Act and is an action already authorized by Parliament. They can already do this. We are not conferring a new power. The bill only recognizes the power and moves it from the Indian Act to Bill S-12.

I merely wish to explain those two points to His Honour in order to be of some assistance.

Hon. Walter P. Twinn: Honourable senators, I should like to thank the Honourable Senator Stanbury. It has been a long time since I have heard talk about cost savings with respect to aboriginal affairs. I wish to compliment him, although I am sure the Department of Indian and Northern Affairs will not agree with him.

According to information I have, the reserves have been surveyed. There are two reserves. I cannot see any added costs.

If it is a money bill, it will probably result in a cost saving to the government. We would like an opportunity to discuss that matter.

• (1700)

I may be out of order, honourable senators, but the reason we want a new act, a new change, is that the Department of Indian Affairs has always stopped development through one procedure or another, whether it be economic or community development on those reservations. Prime Minister Chrétien, then Minister of Indian Affairs, once made a favourable ruling on the Indian Act with regard to our band. Two ministers later, that ruling was overturned. I want you to keep that in your mind, Your Honour, as you are making your decision.

Hon. Len Marchand: Honourable senators, I wish to make a brief intervention regarding the importance of this matter. I am pleased that Senator Stanbury rose to ask the Speaker to make a ruling as to whether this bill is in order, to clear the air with respect to this matter. It is an important bill. It started at the grass roots level with a group of bands indicating that this is what they wanted.

The only other piece of legislation that has been passed in this manner is the bill relating to the Sechelt people of the West Coast. I was talking to the Sechelt people a couple of days ago, and they have just celebrated 10 years of living under that legislation. The important fact is that 92 per cent of their people approved of that process and approved of that bill. There are important principles involved here.

The Hon. the Speaker: Honourable senators, I thank all senators who have participated in this debate. I will take the question under advisement.

Debate adjourned to await Speaker's ruling.

NEWFOUNDLAND

CHANGES TO SCHOOL SYSTEM—AMENDMENT TO TERM 17 OF CONSTITUTION—REPORT OF COMMITTEE—MOTION IN AMENDMENT, AS AMENDED, CARRIED ON DIVISION

On the Order:

> Resuming debate on the motion of the Honourable Senator Rompkey, P.C., seconded by the Honourable Senator De Bané, P.C., for the adoption of the Thirteenth Report of the Standing Senate Committee on Legal and Constitutional Affairs (*amendment to the Constitution of Canada, Term 17 of the Terms of Union of Newfoundland with Canada*), deposited with the Clerk of the Senate on July 17, 1996;
>
> And on the motion in amendment of the Honourable Senator Doody, seconded by the Honourable Senator Kinsella, that the Report be not now adopted but that it be amended by deleting the words "without amendment, but with a dissenting opinion" and substituting therefor the following:
>
> with the following amendment:
>
> > Delete the words in paragraph (*b*) of Term 17 that precede subparagraph (*i*) and substitute therefor the words: "where numbers warrant,";
>
> And on the subamendment of the Honourable Senator Cogger, seconded by the Honourable Senator Bolduc, that the motion in amendment be amended by substituting for the words "with the following amendment:" the words "with the following amendments: (*a*)" and by removing the period at the end thereof and adding the following words:
>
> ; and
>
> > (*b*) Delete the words "to direct" in paragraph (*c*) of Term 17 and substitute therefor the words "to determine and to direct".

The Hon. the Speaker: Honourable senators, it was moved by 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".

Will those honourable senators in favour of the subamendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the subamendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen.

The Hon. the Speaker: Please call in the senators.

Subamendment of Senator Cogger carried on the following division:

YEAS

THE HONOURABLE SENATORS

Andreychuk
Atkins
Beaudoin
Berntson
Bolduc
Buchanan
Carney
Cogger
Cohen
Comeau
Cools
DeWare
Di Nino
Doody
Doyle
Eyton
Forrestall
Ghitter
Grimard
Gustafson
Jessiman
Kelly
Keon
Kinsella
Kirby
Lavoie-Roux
LeBreton
Lynch-Staunton
MacDonald *(Halifax)*
Meighen
Murray
Nolin
Oliver
Ottenheimer
Pitfield
Prud'homme
Rivest
Robertson
Rossiter
St. Germain
Simard
Sparrow
Spivak
Stratton
Tkachuk
Twinn
Wood—47

NAYS

THE HONOURABLE SENATORS

Adams
Anderson
Bonnell
Bosa
Bryden
Carstairs
De Bané
Fairbairn
Forest
Gigantès
Grafstein
Graham
Hébert
Hervieux-Payette
Kenny
Landry
Lewis
Losier-Cool
Maheu
Marchand
Mercier
Milne
Moore
Pearson
Perrault
Petten
Poulin
Riel
Robichaud
Rompkey
Stanbury
Stewart
Stollery
Watt
Whelan—35

ABSTENTIONS

THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: The question now before the house is on the motion in amendment, as amended.

It is moved by 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 therfore the following:

with the following amendment:

(a) Delete the words in paragraph (*b*) of Term 17 that precede subparagraph (*i*) and substitute therfor the words: "where numbers warrant,"; and

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

Will those in favour of the motion in amendment, as amended, please say "yea".

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those opposed please say "nay".

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion the "nays" have it.

And two honourable senators having risen.

The Hon. the Speaker: The vote will be taken immediately. There will be no delay.

Motion in amendment of Honourable Senator Doody, as amended, carried on the following division:

YEAS

THE HONOURABLE SENATORS

Andreychuk	Kirby
Atkins	Lavoie-Roux
Beaudoin	LeBreton
Berntson	Lynch-Staunton
Bolduc	MacDonald (*Halifax*)
Buchanan	Meighen
Carney	Murray
Cogger	Nolin
Cohen	Oliver
Comeau	Ottenheimer
Cools	Pitfield
DeWare	Prud'homme
Di Nino	Rivest
Doody	Robertson
Doyle	Rossiter
Eyton	St. Germain
Forrestall	Simard
Ghitter	Sparrow
Grimard	Spivak
Gustafson	Stratton
Jessiman	Tkachuk
Kelly	Twinn
Keon	Wood—47
Kinsella	

NAYS

THE HONOURABLE SENATORS

Adams	Maheu
Anderson	Marchand
Bonnell	Mercier
Bosa	Milne
Bryden	Moore
Carstairs	Pearson
De Bané	Perrault
Fairbairn	Petten
Forest	Poulin
Gigantès	Riel
Grafstein	Robichaud
Graham	Rompkey
Hébert	Stanbury
Hervieux-Payette	Stewart
Kenny	Stollery
Landry	Watt
Lewis	Whelan—35
Losier-Cool	

ABSTENTIONS

THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: The question now before the house is on the main motion, as amended.

It is moved by the Honourable Senator Rompkey, seconded by the Honourable Senator De Bané, that this report, as amended, be adopted.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those in favour please say "yea".

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those opposed please say "nay".

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion the "nays" have it.

And two honourable senators having risen.

The Hon. the Speaker: We shall proceed to the vote immediately.

Motion, as amended, carried on the following division:

YEAS

THE HONOURABLE SENATORS

Atkins	Kirby
Beaudoin	Lavoie-Roux
Berntson	LeBreton
Bolduc	Lynch-Staunton
Buchanan	MacDonald (*Halifax*)
Carney	Meighen
Cogger	Murray
Cohen	Nolin
Comeau	Oliver
Cools	Ottenheimer
DeWare	Pitfield
Di Nino	Prud'homme
Doody	Rivest
Doyle	Robertson
Eyton	Rossiter
Forrestall	St. Germain
Ghitter	Simard
Grimard	Sparrow
Gustafson	Spivak
Jessiman	Stratton
Kelly	Tkachuk
Keon	Twinn
Kinsella	Wood—46

NAYS

THE HONOURABLE SENATORS

Adams	Maheu
Anderson	Marchand
Bonnell	Mercier
Bosa	Milne
Bryden	Moore
Carstairs	Pearson
De Bané	Perrault
Fairbairn	Petten
Forest	Poulin
Gigantès	Riel
Grafstein	Robichaud
Graham	Rompkey
Hébert	Stanbury
Hervieux-Payette	Stewart
Kenny	Stollery
Landry	Watt
Lewis	Whelan—35
Losier-Cool	

ABSTENTIONS

THE HONOURABLE SENATOR

Andreychuk—1

• (1730)

DIVORCE ACT
FAMILY ORDERS AND AGREEMENTS ENFORCEMENT ASSISTANCE ACT
GARNISHMENT, ATTACHMENT AND PENSION DIVERSION ACT
CANADA SHIPPING ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

Leave having been given to revert to Order No. 2, Government Business:

On the Order:

> Resuming debate on the motion of the Honourable Senator Losier-Cool, seconded by the Honourable Senator Mercier, for second reading of Bill C-41, An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act, the Garnishment Attachment and Pension Diversion Act and the Canada Shipping Act—*(Honourable Senator Jessiman).*

Hon. Anne C. Cools: Honourable senators, I rise to speak to second reading of Bill C-41, to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act, the Garnishment, Attachment and Pension Diversion Act and the Canada Shipping Act.

This bill is about marital breakdown and its terrible consequences for the children of the broken marriage. Bill C-41, among other things, will implement a new child support award framework and strengthen the enforcement of payment of child support by the non-custodial parent. Child support guidelines will be established by regulation and will seek to reduce judicial discretion in child support awards.

Honourable senators, it is time that the very underpinnings of the Divorce Act are reconsidered. In recent years, women have gained enormously in achieving financial equality with men. This should now be reflected in Divorce Act considerations. It is time that we reconsider many of the older premises of women's roles. The Senate must address the modern societal problems underlying divorce and the break-up of the family, and should conclude that the first consideration should be the children and their well-being. The Senate committee must look closely at the issues of custody and access while considering Bill C-41.

Honourable senators, custody is an antiquated and loaded term, reflecting the thinking of ages past. This term should be finding its way out of the Divorce Act in this day and age. Section 2 of the current Divorce Act, Revised Statutes of Canada, 1985, defines custody as including "care, upbringing and any other incident of custody." However, the connotations associated with the term "custody," a "very elastic" term according to *Black's Law Dictionary*, Sixth Edition, are no longer appropriate for ensuring the best interests of the child. *Black's Law Dictionary* tells us that the term custody:

> ...may mean actual imprisonment or physical detention or mere power, legal or physical, of imprisoning or of taking manual possession."

The term custody implies that the child is a chattel to be owned, to be fought over by competing ex-spouses. I should hope that the Senate committee would give serious consideration to the definition of custody and adequate definitions for this modern era.

At marriage and childbirth, custody of children is a joint matter with the two parents. At the time of divorce, joint custody is lost. Suddenly, custody is a matter of determination by the state. Why that is so is unclear at law.

I had hoped, honourable senators, that, in today's modern era, no amendment to the Divorce Act would come before us that would not include joint parenting and joint custody as a condition of the child's life.

I would like to review a highly relevant family law judgment. This is the 1973 case of *Talsky v. Talsky,* which marked a watershed in the law of custody and access. The trial judge, Mr. Justice Lloyd Houlden, granted Mrs. Talsky custody of the children and ordered Mr. Talsky to pay support for the children.

Mr. Justice Lloyd Houlden of the Supreme Court of Ontario, described Mr. and Mrs. Talsky as follows:

> The husband is a hard-working, successful, young dentist with a steadily increasing income. He is highly intelligent with a most presentable appearance. He is a devoted and affectionate father ...
>
> The wife is a most attractive young woman. She is also very intelligent. She kept a neat, tidy, well-organized house for her husband and family. She was able to mix well socially, and to maintain the social position that her husband expected of her. I am satisfied that the wife is equally as fond of the children as her husband, and she is a loving and affectionate mother.

Mr. Justice Houlden also described Mr. Talsky as a:

> ... fairly considerate husband. When his wife was ill, he seems to have been most attentive. On weekends, it was his custom to get his wife her breakfast in bed. It was his practice to take off Wednesday mornings of each week, and on these occasions, he would look after the children so that his wife could go shopping by herself.

• (1740)

> He assisted in the feeding and care of the children. He supplied the petitioner with part-time help from time to time to assist in the household duties even though his financial situation did not warrant this expenditure. Dr. Talsky, right to the date of separation, showed himself as being thoughtful and concerned for the well-being and welfare of his wife.

As to Mrs. Talsky's allegations of cruelty, Mr. Justice Houlden concluded that Mrs. Talsky —

> ...has exaggerated and overstated incidents which were of little consequence. She has taken trivial matters and blown them out of all proportion to their real significance. A woman with her intelligence, if she had put her mind to it, could have easily solved the matters of which she complains. For some reason, she decided very early in the marriage that she had made a mistake and she wanted out. It is unfortunate that she bore two children to the respondent when she had this approach to her marriage, for they have gravely compounded the difficulties which exist between the parties.

However, in his decision to grant custody of the children, Mr. Justice Houlden granted custody to Mrs. Talsky despite the fact that Mr. Talsky was ready to reorganize his professional and personal life to accommodate the children. He was prepared to purchase a new home, and open a dental practice in the basement so that he could be available to the children at all times. He also proposed to close that office on Wednesday afternoon in order to spend more time with the children. Finally, he proposed most of this without recourse to his ex-spouse's resources or finances. Mr. Talsky made an excellent case for custody. However, Mr. Justice Houlden granted custody of the children to Mrs. Talsky. Mr. Justice Houlden determined that the children should be with their mother.

This case was appealed. Mr. Justice Arthur Jessup of the Ontario Court of Appeal, overturned Mr. Justice Houlden's judgment in 1973. Mr. Justice Jessop ruled that:

> ...the rule that children of tender years belong with their mother is a rule of human sense rather than a rule of law as it is erroneously treated by the learned trial Judge; ... It is only one factor to be considered with all the circumstances.

Mr. Justice Jessup also wrote that Mr. Justice Houlden's determination —

> ...overlooks that the situation of the children could not remain as it was at trial and fails to compare their likely future living conditions with the mother to their likely living conditions with the father.

Mr. Justice Jessup concluded:

> In my opinion, the learned trial Judge erred in treating the welfare of the children as the sole consideration rather than the paramount consideration and in not having regard for the conduct of the parties as he was required to do under s. 1(1) of the *Infants Act*, R.S.O. 1970, c. 222.

The Ontario Court of Appeal reversed the original judgment and granted Mr. Talsky custody of the children. Mrs. Talsky appealed the decision, and the Supreme Court of Canada, in a 3-2 split decision, allowed the appeal, and granted custody to Mrs. Talsky.

Honourable senators, a consideration at the time of the hearing was the Infants Act, R.S.O., 1970m c.222. Section 1(1) of the Infants Act, R.S.O. 1970, c. 222, reads in part:

> The court, upon the application of the father or the mother of an infant, ...may make such order as the court sees fit regarding the custody of the infant and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary or discharge the order on the application of either parent...

Custody of a child in divorce proceedings is now governed by section 16 of the current Divorce Act, which states, in part:

> 16(1) A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.
>
> 16(8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

Honourable senators, I repeat, the only factor to be taken into consideration is the best interests of the child. This point is made by Mr. Justice Archibald Twaddle of the Manitoba Court of Appeal. Mr. Justice Twaddle in the 1994 case of *Gunn* v. *Gunn*, stated:

> Neither parent has any better an entitlement to custody than the other. The sole question is the best interests of the children and, if this requires a change in custody, so be it.

However, this is the law, not the practice. Most often, mothers will obtain custody of the children of a marriage. Rarely will fathers obtain custody. In 1990, Statistics Canada reports that, in divorces involving custody, custody was awarded to mothers in 73.3 per cent of the cases, to fathers in 12.2 per cent of the cases, joint custody was awarded in 14.3 per cent of the cases, and fewer than 1 per cent were awarded to a person other than the mother or father. In today's community, few fathers obtain custody. Further, fathers are denied the opportunity to truly be a parent to their children.

Law Professor Julian Payne of the University of Ottawa recognizes this. In his 1993 book, *Payne on Divorce*, he states:

> In a time when parents are not restricted to their former traditional roles, it is inappropriate to assume that one parent has a greater ability to parent than the other. Despite formal recognition of equality between the parents, however, the tender years doctrine or its modern equivalent, the 'primary caregiver (or caretaker) doctrine' still reflects the continuing reality that mothers usually assume a much larger role in the day-to-day lives of younger children.

Professor Payne, in his book, cites the 1990 Ontario District Court case of *Doe* v. *Doe,* which states that:

> Whether the tender years doctrine is styled a rule of common sense or not, the factual reality is that the bulk of child care, particularly of pre-school age children, is performed by mothers... The tender years doctrine reflects that a young child is more likely to be cared for by the child's mother and, if that is the case, it is in the best interests of the child to remain with the mother unless there are other compelling reasons to uproot the child in the child's best interests.

Honourable Senators, today's family law and divorce law is deeply troubled and has become the battleground of ideologies and idealogues. Divorce proceedings and child custody disputes are not a suitable home for ideologies. Our Senate committee must be most attentive to this and uphold the best interests of the child in divorce and custody.

Honourable Senators, the Senate must reconsider the original premises of the *Divorce Act* given the changed context. The role of women has changed considerably over the last 20 years. The *Divorce Act* must reflect our modern era in its consideration of the child. The Senate should carefully consider the definition of the term "custody" and its impact on the child. As parliamentarians, honourable senators, we have the grave responsibility to ensure that the children of divorce receive the support, financially and psychologically, of both parents. Children need love and care from both parents. Senators have a duty to these children.

I would further appeal to Senators Losier-Cool and Jessiman who are listening attentively that the Senate committee examine this very bitter and painful and tragic area of law and human relations with enormous diligence.

On motion of Senator Jessiman, debate adjourned.

[*Translation*]

A BILL TO CHANGE THE NAMES OF CERTAIN ELECTORAL DISTRICTS

SECOND READING

Hon. Roch Bolduc moved second reading of Bill C-347, to change the names of certain electoral districts.

He said: Honourable senators, this is a bill to change the names of certain electoral districts. There are apparently 19 throughout Canada. This bill is the result of an agreement among the parties represented in the House of Commons.

It is not a highly contentious bill. To take the example of the Gaspé, which I represent, the word "Pabok" is added because the usual method of assigning names includes the name of each of the regional county municipalities. This is what the bill is about.

[*English*]

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, I understand that this bill passed unanimously with all-party approval in the other place. Accordingly, there appears to be a disposition that we move this bill, as is our practice, to the appropriate committee, which in this case would be the Standing Senate Committee on Legal and Constitutional Affairs.

Senator Bolduc: Is the general sentiment that the bill go to committee, or could it go directly to third reading?

Senator Graham: No.

The Hon. the Speaker: It is moved by the Honourable Senator Bolduc, seconded by the Honourable Senator Berntson, that this bill be read the second time.

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

Hon. Senators: Agreed.

Motion agreed to and bill read the second time.

REFERRED TO COMMITTEE

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

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

ASIA-PACIFIC REGION

REPORT OF FOREIGN AFFAIRS COMMITTEE REQUESTING AUTHORIZATION TO TRAVEL FOR PURPOSE OF PURSUING STUDY ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Foreign Affairs (*Budget - Special Study on the Asia Pacific region*), presented to the Senate on November 25, 1996.

Hon. John B. Stewart, Chairman of the Standing Senate Committee on Foreign Affairs, moved the adoption of the report.

Motion agreed to and report adopted.

The Senate adjourned until tomorrow at 2 p.m.

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Wednesday, November 27, 1996