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THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Wednesday, March 12, 1997

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

Prayers.

SENATORS' STATEMENTS

NATIONAL FARM SAFETY WEEK

Hon. Eileen Rossiter: Honourable senators, today, March 12, marks the beginning of National Farm Safety Week. It is important to draw attention to farm health and safety, since farming is considered to be one of the most dangerous occupations in Canada. The Canada Safety Council has estimated that there are approximately 100 accidental deaths and more than 5,000 time-loss injuries sustained each year by Canadian farm workers. The rate of accidental death on the farm is predicted to be 20 per cent higher than the national average, making the number of fatalities higher for farming than for any other industry. The death rate in agriculture involves a proportionately higher percentage of young and elderly. Children routinely work and play at the work site, and the home is also located at the work site.

Hazards on the farm arise from a number of sources: chemical use, machinery operation and repair, noise, dust, the design of farm facilities, and economic and human stress, among others. These are hazards with which farmers and farm families live on a daily basis. It is estimated that there are 130 farm-related fatalities in Canada each year, that 1,200 people are hospitalized as a result of farm-related injuries, and that 50,000 people sustaining farm-related injuries are required to seek medical attention or take a day away from their normal work activities. Many farm fatalities are predicted to result from machinery use despite such design changes as roll-over protection, a reduced number of points where blockages may occur, and improvements in guard design.

The issue of farm health and safety is not new to the Senate. I am reminded of two reports tabled by the Standing Senate Committee on Agriculture and Forestry. One is "Farm Stress: Its Economic Dimension, Its Human Consequences" in June of 1993 under the chairmanship of Senator Barootes, and the other is "Farm Machinery: Lost Lives, Lost Limbs" in July of 1995 under the chairmanship of Senator Hays. It is fitting that the Senate recognize the work done by the Canadian Coalition for Agricultural Safety and Rural Health, the Canadian Federation of

Agriculture, the Canada Safety Council, Agriculture and Agri-Food Canada, and others in promoting greater farm health and safety.

The message of farm health and safety is one that should be promoted not only during National Farm Safety Week but in every hour of every day throughout the year, every year.

MANGANESE-BASED FUEL ADDITIVES

RESPONSE TO QUESTIONS RAISED DURING DEBATE ON INTERIM REPORT

Hon. Ron Gitter: Honourable senators, my colleague Senator Taylor raised a question last evening which I did not quite hear, or perhaps my stomach was grumbling too much. Rather than leaving it unanswered on the record, I felt that perhaps I should respond to that question.

Honourable senators may remember that Senator Taylor's question concerned the difference between the original on-board diagnostic systems and the new on-board diagnostic II systems, which are causing automobile companies apparent problems. As Senator Taylor may recall, evidence came before our committee from Mr. Hicks, the Vice-President of Ethyl Canada, who said as follows:

When we talk about OBD systems, as opposed to emission control systems, you must keep in mind that the on-board diagnostic system is just that. It just diagnoses a problem. It is a computer program, not hardware. What burned MMT comes into contact with are the oxygen sensors that stick up into the exhaust stream after the exhaust comes out of the engine and goes through the catalyst. Basically, the oxygen sensor is there to help the fuel injector operate. It tells it whether the mixture is too lean or rich. When the auto makers were required to develop the OBD system, they added another exhaust gas sensor after the catalyst, took measurements from both and somehow calibrated it into a computer program that would state whether or not the catalyst is working.

It is a little misleading to say "gum up the OBD system." That is like saying "gumming up" a computer. MMT would never come in contact with the software or with the computer.

The situation is that there is no change. We are merely talking in terms of the same software. We are merely talking in terms of MMT having no impact on the software whatsoever. There is no mechanical technology involved here. There is no new device which MMT might impact upon differently than it did in the test in which the U.S. Environmental Protection Agency reached their conclusion that MMT does not cause or contribute to the failure of any emission control devices. The scientific evidence demonstrated that the operation of the sensors is not affected by MMT.

Senator Doody: I am sure it is all perfectly clear now.

Hon. Nicholas W. Taylor: Honourable senators, may I be permitted to ask a supplementary to that response?

Some Hon. Senators: No.

• (1340)

The Hon. the Speaker: The rules do not permit debate during Senators' Statements. Nevertheless, the Senate is master of its own rules.

Senator Doody: The senator can make a statement if he wishes to do so!

The Hon. the Speaker: Is leave granted?

Some Hon. Senators: No.

The Hon. the Speaker: I am sorry, leave is not granted.

Senator Taylor: Honourable senators, the number of Liberal members in the legislature may be low, but they still exceed — by approximately 400 per cent — the number of Tories in the federal house.

An Hon. Senator: This is good news!

Senator Taylor: In other words, it is almost a mob compared to the corporal's guard that they have.

Honourable senators, by accepting Ethyl Corporation's statement to the effect that you could no more gum up an on-board diagnostic system than you could gum up a computer, my honourable friend has shown how far out of date he is. Computers can be gummed up, and gummed up royally. Anyone who has let their grandchildren loose on a computer can tell them that!

An Hon. Senator: Or husbands!

Senator Taylor: Yes, or husbands.

The fact is that, by law, OBD-IIs are required on new cars sold in the lower B.C. mainland and in California. If my honourable friend does not know the difference between the OBD-II and

OBD-I and is willing to accept the evidence from Ethyl Corporation, which sells manganese derivatives, that there is no difference —

The Hon. the Speaker: Order! Honourable Senator Taylor, I must interrupt you. I repeat, Senators' Statements is not a time for debate or questions. If you have a point that you wish to make on its own, that is valid, but you cannot debate or respond in answer to a previous statement.

Senator Taylor: Your Honour, I am trying to make the point that some of the earlier statements were incorrect. I am not debating, I just want to make the point that the information is highly selective.

Some Hon. Senators: Order!

The Hon. the Speaker: Senator Taylor, I have been asked by honourable senators to intervene, and I must ask you to defer.

An Hon. Senator: They are afraid of the truth!

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to some distinguished visitors in the gallery. We are honoured to welcome the Honourable Mr. Luvsanbaldangiin Nyamsambuu, Minister of Agriculture and Industrialization of Mongolia.

The minister is accompanied by another delegation, including two members of the Great Hural, the Parliament of Mongolia, which is a newly democratic state. I do not know if they will learn much by observing the Senate today, but we wish them welcome here in the Senate of Canada.

Hon. Senators: Hear, hear!

ROUTINE PROCEEDINGS

THE ESTIMATES, 1996-97

REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (B) PRESENTED AND PRINTED AS APPENDIX

Hon. David Tkachuk: Honourable senators, I have the honour to present the ninth report of the Standing Senate Committee on National Finance concerning the examination of Supplementary Estimates (B), laid before Parliament, for the fiscal year ending March 31, 1997.

I ask that the report be printed as an appendix to the *Journals of the Senate* of this day and that it form part of the permanent record of this house.

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

Hon. Senators: Agreed.

(For text of report, see Appendix to today's Journals of the Senate, p. 1098.)

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

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

[Translation]

TRANSPORT AND COMMUNICATIONS

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

Hon. Lise Bacon: Honourable senators, I give notice that on Thursday next, March 13, 1997, I will move:

That the Standing Senate Committee on Transport and Communications have power to sit at 3:30 p.m. on Tuesday, April 8, 1997 for its study of Bill C-216, An Act to amend the Broadcasting Act, even though the Senate may then be sitting and that Rule 95(4) be suspended in relation thereto.

[English]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MONITOR IMPLEMENTATION OF DIVORCE ACT

Hon. Mabel M. DeWare: Honourable senators, Bill C-41 was returned to the House of Commons, with a letter from the Honourable Joyce Fairbairn saying that she would entertain a motion in the Senate to have a social policy committee review the implementation of the bill.

Therefore, I give notice that on Thursday next, March 13, 1997, I will move:

That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to monitor the implementation and application 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, and the Associated Federal Child Support Guidelines, and;

That the Committee present its report no later than June 30, 1998.

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO PERMIT ELECTRONIC COVERAGE OF PROCEEDINGS ON TOBACCO BILL

Hon. Sharon Carstairs: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(i), I move:

That the Standing Senate Committee on Legal and Constitutional Affairs be empowered to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

Hon. Michel Cogger: Honourable senators, would Senator Carstairs entertain a question?

Senator Carstairs: Yes.

Senator Cogger: Is the honourable senator's motion forever? Henceforth, will all proceedings of the Legal and Constitutional Affairs Committee be televised, or is it for one particular reference?

Senator Carstairs: Thank you, Senator Cogger. The Senate has come to an agreement with CPAC that they will provide up to eight hours of coverage. Since they have expressed an interest in giving coverage to Bill C-71, I require the permission of the Senate for the proceedings of the committee to be televised.

Senator Cogger: Honourable senators, would the honourable senator make that agreement with CPAC available to the Senate so that other chairmen who might want their proceedings televised can look at it?

Senator Carstairs: The agreement is for eight hours of coverage. It is up to CPAC to decide which committee it will cover and which committee it will not cover. Quite frankly, they will probably select committees which they think are of greatest interest to the public.

• (1350)

The Senate cannot dictate to CPAC what they will and will not cover. The agreement is that they will cover up to eight hours a week.

Hon. C. William Doody: Honourable senators, it has been the tradition in this place that the individual committees decide, from time to time and with the permission of the Senate, whether they will telecast their proceedings.

I now understand — though I may be incorrect, and I hope I am — that we are turning the authority for this choice over to CPAC, and they will decide when or for how many hours the proceedings of an individual Senate committee will be telecast.

That is a pretty radical departure from the tradition of this place, although it may have merit and may be the way to go. However, from this angle, it is certainly a departure from tradition to have committee proceedings televised under these circumstances. It should be done with the debate and concurrence of the house.

Senator Carstairs: Honourable senators, it is my understanding that the Internal Economy Committee — and perhaps Senator Kenny could more appropriately answer these questions — worked out this agreement with CPAC.

I was contacted and asked if our committee would be interested in having our hearings on Bill C-71 televised. I indicated that I had no difficulty with them covering our hearings under the agreement that, apparently, had been entered into by the Internal Economy Committee.

Senator Doody: I have no problem with CPAC televising these proceedings. I do worry about the blank cheque which gives them the authority to come and televise anything at their discretion. While granting permission or authority from the chamber to do what Senator Carstairs is asking in this particular instance, more serious thought should be addressed to the implications of giving this authority to CPAC to do what they will, when they will.

The Senate has been jealous about guarding its prerogatives in terms of television coverage. We should talk about it and think about it before we pass it over to whomever, not only CPAC.

Hon. M. Lorne Bonnell: Honourable senators, I do not know just what the committee has in mind. However I should like to suggest that we amend the resolution to cover Bill C-71. If something else comes up, CPAC might want to cover it, and we would just as soon keep it *in situ*. Perhaps we should just have the motion refer to Bill C-71.

The Hon. the Speaker: It was moved by Senator Carstairs seconded by Senator Losier-Cool, with leave of the Senate and notwithstanding rule 58(1)(i):

That the Standing Senate Committee on Legal and Constitutional Affairs be empowered to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings.

Does any other honourable senator wish to speak?

MOTION IN AMENDMENT

Hon. M. Lorne Bonnell: Honourable senators, I move:

That the motion be amended by adding after the word “proceedings” the following:

during the period of its deliberation on Bill C-71.

Hon. John Lynch-Staunton (Leader of the Opposition): I second the motion in amendment.

The Hon. the Speaker: Is it the wish of honourable senators to adopt the motion in amendment?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion in amendment please say “yea.”

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion in amendment please say “nay.”

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the “yeas” have it. I declare the motion in amendment carried.

Honourable senators, we are now on the main motion, as amended, by the Honourable Senator Carstairs. Is it your pleasure to adopt the motion as amended?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion as amended please say “yea”?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators who are against the motion as amended please say “nay”?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion the “yeas” have it. I declare the motion as amended carried.

Motion as amended agreed to, on division.

QUESTION PERIOD

HUMAN RESOURCES DEVELOPMENT

LEVEL OF UNEMPLOYMENT—COMPARISON WITH OTHER INDUSTRIALIZED COUNTRIES—REQUEST FOR TIMING OF RESPONSE

Hon. Terry Stratton: Honourable senators, I should like to address a question to the Honourable Leader of the Government in the Senate. I want to carry on from my question of yesterday regarding the high unemployment rate, which is at a persistent 9.7 to 10 per cent, and the particularly disturbing high unemployment rate for youth, which is hovering at 17 per cent. The minister stated that she would get back to me concerning the reasons why there is a discrepancy between the high unemployment rate in Canada and the low unemployment rates in Great Britain and the United States, they being at virtually half of what it is in Canada. I was wondering if perhaps the Leader of the Government could give me a more definitive answer as to when that response is likely to occur.

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I cannot be definitive at this time. I was in caucus all morning, and I do not have a response for my friend as yet. However, I was making inquiries prior to entering the house today, and I will obtain that response for the senator as soon as possible.

Senator Stratton: Honourable senators, I appreciate the efforts of the honourable senator. It is important that not only we in this chamber but all Canadians understand why there is this high unemployment rate. My friend will not mind if I am persistent on this question and continue on a weekly basis to ask for the answer.

Senator Fairbairn: Certainly not. As a first time senator many years ago, I made a habit of asking a sugar beet question every day the Senate sat, so feel free.

Senator Doody: Yes, I remember it well.

LEVEL OF UNEMPLOYMENT—PERCENTAGE OF NEW JOBS CREATED IN NOVA SCOTIA

Hon. J. Michael Forrestall: Honourable senators, in answer to Senator Stratton's questions yesterday, the minister spoke in terms of 700,000 new jobs. How many of those jobs showed up in Cape Breton?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I cannot answer that question for Senator Forrestall. I am not sure if Statistics Canada can, either. However, I will make that inquiry.

Senator Forrestall: Perhaps the Leader of the Government would expand it to include all of Nova Scotia.

Senator Fairbairn: I will make that inquiry as well.

PRIVY COUNCIL OFFICE

TRANSFER OF PERSONNEL FROM MINISTERS' OFFICES— GOVERNMENT POSITION

Hon. Fernand Roberge: Honourable senators, the 1998 Estimates which have been tabled indicate that there has been a decrease in the number of staff working in ministers' offices who fall under the PCO. This includes the staff of the Leader of the Government in the Senate. The Estimates indicate a decrease from 57 staff in 1996-1997 to 49 staff in 1997-1998.

We were advised by Treasury Board officials that these staff reductions reflect the fact that members of the staff were merely made public servants and that they remain in the Privy Council Office.

Can the Leader of the Government in the Senate tell me, were these eight staff members given pink slips, or is it true that they were all transferred to public servant status in the PCO? Can she explain this?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, in response to Senator Roberge, I will investigate that question and talk with people in PCO about it. I cannot give him an answer today.

Senator Roberge: In Part III, the expenditure plan of the 1997 Estimates of the Privy Council Office, it is clearly indicated that the number of staff working in the Prime Minister's Office has increased from 79 in 1994-1995, to 85 in 1997-1998. Would the minister also explain this increase?

Senator Fairbairn: I will take that question as notice as well, senator.

Hon. C. William Doody: Honourable senators, I wonder if the honourable leader could, at the same time, try to correlate the length of time it takes for delayed answers to reach the floor of this place with the number of people employed in the two offices just mentioned.

• (1400)

JUSTICE

SPECIAL JOINT COMMITTEE ON CUSTODY AND ACCESS— TIMETABLE FOR IMPLEMENTATION

Hon. Mabel M. DeWare: Honourable senators, during our long debates in the Standing Senate Committee on Social Affairs, Science and Technology on Bill C-41, over and over again our witnesses discussed access and custody. Although access was not one of the definitions in the bill, we could not seem to get away from the fact that divorce and child custody are important issues in the country today. At the end of our deliberations, the Honourable Mr. Allan Rock agreed to appoint a joint committee of the House of Commons and the Senate to look into the matter of access and custody.

My question for the Leader of the Government in the Senate today is: Could she find out for us just when the Honourable Minister of Justice is planning on setting up that committee? In his letter to the committee, he did say that it would be during this session of the House.

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I will be pleased to ask my colleague that question.

DELAYED ANSWER TO ORAL QUESTION

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, I have a response to a question raised in the Senate on February 6, 1997, by the Honourable Senator Tkachuk regarding the sale of Airbus aircraft to Air Canada.

JUSTICE

SALE OF AIRBUS AIRCRAFT TO AIR CANADA—ALLEGED
CONSPIRACY TO DEFRAUD FEDERAL GOVERNMENT—
KNOWLEDGE OF GOVERNMENT MINISTERS—SOURCE OF
INFORMATION PROVIDED BY WAY OF DELAYED ANSWER—
GOVERNMENT POSITION

(Response to question raised by Hon. David Tkachuk on February 6, 1997)

The information in this and previous answers was provided by the Department of the Solicitor General. There was no misleading of the Senate.

The Solicitor General learned that Mr. Mulronev was mentioned in the letter of request on November 9, 1995, when he received a copy of correspondence sent by Mr. Tassé, Mr. Mulronev's lawyer, to the Minister of Justice.

In the late summer of 1995, the Solicitor General was advised, in very general terms, that the RCMP was asking Swiss authorities for help in the Airbus investigation. He was not told who would be mentioned in the letter or what its contents would be. When it is believed that a matter is in, or may enter, the public domain, the Solicitor General is advised in order that he may respond to Parliament on behalf of the RCMP, should any questions be raised.

ORDERS OF THE DAY

TOBACCO BILL

SECOND READING—DEBATE ADJOURNED

Hon. P. Derek Lewis moved second reading of Bill C-71, to regulate the manufacture, sale, labelling and promotion of

tobacco products, to make consequential amendments to another Act and to repeal certain Acts.

He said: Honourable senators, I am pleased to rise today to begin the second reading debate on Bill C-71, the Tobacco bill. This bill has one clear and compelling purpose — the health of Canadians, especially the health of young Canadians. Let there be no doubt on this point.

Honourable senators, as the Minister of Health has made clear during debate in the other place, this bill is a central and critical element in the government's comprehensive tobacco control strategy. It complements education programs designed to make Canadians more fully aware of the serious health consequences of tobacco use, as well as the tobacco tax increase and anti-smuggling initiatives announced last November.

The government's tobacco control strategy recognizes the complex and pervasive nature of tobacco use in our society. It takes into account the various factors that influence the smoking decision process: the social environment, messages and events that affect attitudes, beliefs and behaviours about tobacco use. Bill C-71 addresses all of these, but most particularly how these factors affect the decision of young people to start and continue to smoke. Bill C-71 does this in a number of ways: One, it strengthens existing restrictions on the access young people have to tobacco products; two, it places reasonable limits on the marketing and promotion of these products; three, it increases health information on tobacco packaging; and, four, it establishes the powers the government will need to regulate the physical nature of tobacco products.

Honourable senators, these are reasonable constraints on a legal but lethal product that has been conclusively shown to contribute to cancer, heart and lung disease and a multitude of other health ailments. There are few Canadians whose lives have not been touched by the death or illness of a family member or friend from a smoking-related illness. One only has to witness the slow wasting away of life caused by smoking to know that this product and its commercial promotion must be controlled, and that comprehensive measures must be taken to encourage Canadians not to start, or to quit smoking.

The facts about tobacco and its effect on health are well documented, but they still bear repeating. Smoking is the number one preventable cause of death and disease in Canada today. Smoking will kill over 40,000 Canadians this year. That is three times more people than fall victim to AIDS, automobile accidents, suicide and drug abuse combined. Seven million Canadians — almost one in three over the age of 15 — are daily smokers. Most want to quit, and have tried to quit, but the stranglehold of tobacco addiction makes quitting very difficult.

Of particular concern, honourable senators, is the pattern of youth smoking. More than 250,000 Canadian youths take up smoking every year. Eighty-five per cent of these new smokers are under the age of 16. Right now, 29 per cent of young people between the ages of 15 and 19 smoke. Fourteen per cent of children between the ages of 10 and 14 smoke. The majority of those young people who continue to smoke into adulthood will die of tobacco-related illness. The need for action is clear.

Some people argue that smoking is a matter of personal choice. Honourable senators, that is simply not so. All Canadians pay for the ravages of smoking. Smoking costs Canada's health care system over \$3.5 billion annually. That is a lot to ask of the health system at a time when all levels of government are trying to restore fiscal sanity to their budgets.

The cost of smoking does not end at the hospital or the doctor's office. Canada's overall economy must also bear the consequences of smoking through lost productivity and lost income. Statistically, smokers are more likely to miss work than non-smokers. Smokers cost Canadian employers approximately \$2 billion annually in employee absenteeism. That is 28 million days that are not worked by people who smoke. All told, the economic cost borne by Canadian society as a whole, due strictly to smoking, is approximately \$15 billion.

Although this figure is staggering, it pales in significance when we consider the human costs of smoking. The human suffering and tragedy caused by smoking-related diseases simply has no price. This is why the government has drafted this piece of legislation, and why it is so important to ensure its swift passage into law.

Honourable senators may recall that in 1988 the government of the day introduced, and Parliament passed, the Tobacco Products Control Act. This act banned advertising and restricted the promotion of tobacco products, and required packaging of tobacco products to display prominent health messages and information on toxic constituents. In a 1995 Supreme Court of Canada decision, key parts of the Tobacco Products Control Act were struck down. In rendering its decision, however, the court made some very helpful observations and rulings which provided guidance for acceptable legislation.

In the aftermath of the September 1995 Supreme Court decision to strike down key parts of the Tobacco Products Control Act, the tobacco industry said that it could regulate itself; but the industry's voluntary code failed at the starting gate, and the people it has failed the most are Canada's young people. That is the very same group which is most vulnerable to lifestyle advertising, sponsorship promotions and tobacco brand name associations. These promotional activities reinforce the mistaken notion that tobacco is normal or innocuous.

The government has taken great care to ensure that the legislative measures contained in Bill C-71 are consistent with

the directions provided by the Supreme Court. In doing so, the government recognized that, in order to promote the health of Canadians, the tobacco control measures contained in Bill C-71 must be able to withstand court challenges as already threatened by the tobacco industry. The Supreme Court recognized that the detrimental health effects of tobacco consumption are both dramatic and substantial. The Supreme Court acknowledged that tobacco kills, and confirmed the right of the federal government to legislate controls on the advertising of tobacco products. As Justice LaForest wrote:

...the Parliament can validly employ the criminal law to prohibit tobacco manufacturers from inducing Canadians to consume these products, and to increase public awareness concerning the hazards of their use.

• (1410)

The Supreme Court also held that the purpose of the previous Tobacco Products Control Act, to reduce inducements to use tobacco in light of the health effects of tobacco consumption, is a valid and important legislative objective warranting limitations to the right of free expression.

In the majority judgment, Justice McLachlin wrote:

...even a small reduction in tobacco use may work a significant benefit to the health of Canadians and justify a properly proportioned limitation of free expression.

The government is firmly of the view that Bill C-71 accomplishes this in a reasonable and proportionate manner.

Contrary to what the tobacco industry may suggest, the Supreme Court recognized the link between certain forms of tobacco advertising and consumption. The court outlined for Parliament the options that it would consider "a reasonable impairment on the right of free expression." These court tested options are incorporated in this bill. They include: a partial ban on advertising that allows product information and brand preference advertising; a ban on lifestyle advertising; measures to prohibit advertising aimed at children and adolescents; and health labelling requirements with attribution.

This bill not only reflects the guidance of the Supreme Court but also the government's wide-ranging consultations with groups on all sides of the tobacco sale and consumption issue.

Beginning with the publication of "Blueprint for Tobacco Control" in December 1995, all interested parties have had ample opportunities to make their views known to the Minister of Health. The result of these consultations and the Supreme Court's guidance is a broadly balanced bill that takes into consideration the need to restrict the sale and promotion of tobacco, but it also respects the tobacco industry's right to communicate with its customers.

Since Bill C-71 was tabled in December, the Minister of Health has further listened to the opinions of Canadians, Members of Parliament from all parties, and the representatives of industry, cultural, sport and health groups. As a result of this process, he has amended the original legislation to reflect these further comments. In addition, the minister has committed the government to consulting with all affected parties during the regulatory process.

The government has examined the linkages between smoking and advertising. Bill C-71 responsibly and reasonably balances considerations for the tobacco companies' freedom of expression with the advancement of the government's health objectives, particularly where the health of young Canadians is concerned.

The government has listened to Canadians. Ninety-one per cent of them support the goal of discouraging young people from becoming addicted to tobacco. Eighty per cent of Canadians, including a majority of Quebecers, support the package of anti-smoking measures contained in this bill. In short, Canadians see this as a health priority and want us to act in the interests of health.

Bill C-71 addresses these public concerns through a comprehensive package of measures. Let me now describe the bill's major elements and how the government expects these to work.

The first element of this bill will restrict the access that young people will have to tobacco products. Tobacco sales to minors are already illegal, yet teenagers continue to be able to purchase cigarettes and other tobacco products. It is clear that the government must act to reinforce the existing prohibition.

The bill would restrict the sale of tobacco products through vending machines and ban their sale through the mail. Self-serve displays would disappear from all retail outlets with the exception of duty-free stores. To further discourage sales of tobacco to minors, retailers would now be required to request photo identification from all customers who appear to be under the age of 18 years.

Taken together, these measures will ensure that anyone who wants to buy a tobacco product must do so in person and be over 18 years of age. This first element strengthens the existing provisions of the Tobacco Sales to Young Persons Act. In addition to the federally-legislated measures, the provinces can institute their own restrictions on the sale of tobacco to minors.

The bill will prohibit tobacco product advertising such as broadcasting advertising, billboards, bus panels and street advertising posters. It will permit tobacco companies to communicate product and brand preference information in print ads in publications that are primarily read by adults, in direct mailings to adults and in places where children are not permitted by law; for example, premises that are licensed to sell alcohol.

The bill will prohibit brand name promotions at the retail level. For example, the countertop display so common in many

of Canada's shops will disappear, as will floor displays that promote a given brand name product.

Further, in order to end the association that is created between tobacco and certain lifestyles and activities, this bill will prohibit the use of false or misleading claims on product packaging and end the use of tobacco brand names on logos on youth-orientated products and those with lifestyle connotations. Why should we allow our kids to be turned into walking billboards for the tobacco industry?

Another element of this package of measures concerns the regulation of the use of product brand names, logos and other elements in event sponsorship promotions. The legislation will restrict the display of tobacco brand names and brand elements to the bottom 10 per cent of the display area of promotional materials.

Sponsorship promotions will be permitted in publications geared toward an adult readership, in direct-to-home mailings, and at the site of sponsored events. Broadcasting of events will also be permitted with no sight-line restrictions.

Let me be perfectly clear about this point: This legislation does not ban tobacco companies from sponsoring sports or cultural events. It does limit the persuasiveness of tobacco promotion and its potential impact on young people. Bill C-71 will ensure that the primary purpose of such activities will be to promote the sponsored event, not tobacco.

Tobacco promotions literally paper our environment. Canadians cannot help but be exposed every day to an onslaught of tobacco advertising. Young people are especially vulnerable to these sophisticated promotions. By repeatedly associating tobacco products with popular and socially acceptable events, the industry creates the perception that tobacco is desirable, socially acceptable and more prevalent in society than it actually is.

Young people themselves tell us that they recognize that promotional materials for tobacco-sponsored events have more than one purpose. When asked what they thought was the purpose of tobacco company sponsorships, Canadian youths tell us that the use of brand names in tobacco sponsored events advertizes tobacco products and smoking as well as the specific events.

The government recognizes that groups and organizations sponsored by tobacco companies may be affected by the legislation and that they will need time to make other sponsorship arrangements. That is why the government amended this bill in the other place to include a phasing-in period before the provisions of this bill, dealing with event sponsorships, come into force. I draw the attention of senators to clause 66 of the bill which now provides that these provisions will come into force on October 1, 1998.

The third element of the bill before us today would increase the health information that is printed on tobacco product packages. At present, there exists no requirement for tobacco companies to inform consumers about the health risks of

smoking. This bill will once again require manufacturers to place prominent health information on cigarette packages and to attribute these health messages as required by the Supreme Court's 1995 ruling. It will also increase the amount of information that smokers will receive about tobacco use, and the toxic constituents in tobacco products and tobacco smoke.

• (1420)

The Health Canada study suggests that the cigarette package is second only to television as the source of health information for smokers. After this bill becomes law, Canadian smokers will have in their hands information which will tell them exactly what are the dangers of smoking. It is the government's hope that smokers who read about chemical substances such as lead, arsenic and benzene contained in cigarette smoke will be further encouraged to quit.

The final element of this bill is the establishment of the powers to regulate the physical nature of tobacco products and their smoke emissions. The government does not intend to propose immediate regulations concerning products and emissions. However, as our scientific knowledge about tobacco products and their use develops, this authority would provide the government with future flexibility in dealing with smoking and both its direct and indirect effects.

Moreover, it is important for the government to have the power to act as the market for tobacco products changes. The establishment of this regulatory power will enable the government to intervene, should any new tobacco products enter the marketplace. Seeking this regulatory power is consistent with the overall aim of controlling tobacco consumption. It is consistent with the historic role of the federal government in product regulation. The federal government already regulates a host of products, such as foods and drugs, where the health and safety of the public is at stake. It is logical and overdue that the government should extend this power to tobacco products, which are inherently hazardous and lethal, but which have been treated for too long as an exception.

Let me say a few words about the regulatory process that will follow the passage of this bill. Subject to my later observation, this process will not differ in any way from the normal regulatory process. All regulations relating to the Tobacco Act will appear in the *Canada Gazette*, and any and all parties will have ample opportunity to make their views known to the government concerning the specific details of the regulations. This, too, is part of the normal, democratic process for laws of this type.

Since the publication of the "Blueprint for Tobacco Control," the government has already consulted widely on its proposed tobacco control policies. These consultations are reflected in the measures outlined in this bill. During debates in the other place, the government listened attentively to all parties and amended the bill to reflect some of these comments. The regulatory process will be similarly open and transparent.

In this respect, I must draw the attention of honourable senators to a government amendment to the bill which added

clause 42.1. This clause provides that no proposed regulation can be made unless it has first been laid before the House of Commons, where it will be automatically referred to an appropriate committee of that House for inquiry, which committee will report its findings back to the house. The proposed regulation can only then be made if the House of Commons has not concurred in the report of the committee within 30 sitting days of its having been laid before the House, or the House of Commons has concurred in the committee's report approving the proposed regulation. This provision would appear to add greatly to the opportunity for consideration of any proposed regulation.

With Bill C-71, the government has made clear its determination to place the health of Canadians foremost in its tobacco control policy. Children in particular must be spared from the lethal addiction to cigarettes to the greatest extent possible. To do so, the government has brought forward a balanced, reasonable and, more important, comprehensive piece of legislation that gives it the power to act now and in the future to discourage the use of tobacco. When it comes to tobacco use, there can be no "business as usual." Tobacco is the only legal product that, when used as directed, robs the users of their health, and then kills.

Since the Supreme Court's decision to strike down the Tobacco Products Control Act, another 375,000 Canadians have taken up this deadly habit. About 300,000 of them are children. We cannot permit this trend to continue unchecked.

Canadians have understood in a general way for years the link between health and tobacco consumption. The Canadian public expects the government to help reduce the tragic consequences of smoking. Let us not fail in our duty to these Canadians who trust us to defend their health and that of their children.

Honourable senators, I ask for your support for this bill.

On motion of Senator Lynch-Staunton, debate adjourned.

**EXCISE TAX ACT
FEDERAL-PROVINCIAL
FISCAL ARRANGEMENTS ACT
INCOME TAX ACT
DEBT SERVICING AND REDUCTION ACCOUNT ACT**

BILL TO AMEND—REPORT OF COMMITTEE ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Kirby, seconded by the Honourable Senator Maheu, for the adoption of the thirteenth report of the Standing Senate Committee on Banking, Trade and Commerce (Bill C-70, to amend the Excise Tax Act, the Federal-Provincial Fiscal Arrangements Act, the Income Tax Act, the Debt Servicing and Reduction Account Act and related Acts, with an amendment and a resolution), presented in the Senate on March 11, 1997.

Hon. John Buchanan: Honourable senators, I had prepared a speech to deliver of approximately an hour and a half's duration, but I have decided to split it up. I will deliver a little bit of it now and most of it later on.

First, I want to congratulate our committee because it did something that the House of Commons refused to do. I really do not understand why the House of Commons refused to go to the provinces of New Brunswick, Nova Scotia and Newfoundland. Were they afraid to go?

Some Hon. Senators: Yes.

Senator Buchanan: Were they afraid of what people would say?

Some Hon. Senators: Yes.

Senator Buchanan: Were they afraid that they would come back with egg on their faces and have to do something about it?

Some Hon. Senators: Yes.

Senator Buchanan: Therefore, they did not go, and Diane Brushett was their spokesperson. What a spokesperson! First, she derided the Senate. She said, "The gall of unelected senators to go down to Nova Scotia to hold public hearings. The gall of them to ask the people of Nova Scotia to come forth and say whether they want the HST or not. The gall of them asking senior citizens and pensioners to come forward and tell the government why they do not like the HST."

"Now," says Diane Brushett, "I take issue with something Senator Buchanan says. He says it will cost the consumers of Nova Scotia much more money. I want to debate him on that." Unfortunately, for me, I was on the telephone, wishing happy birthday to a dear old lady who had turned 80-some years of age, and she was very upset about the HST, let me tell you. When I came back, it was too late. The chairman, quite rightly, would not let me get up to debate Diane Brushett, who had said that this change in the tax will not cost anything to the senior citizens, and all of those other people, including low-income and middle-income people. She said, "I challenge Senator Buchanan to debate me on that," because she knew I was not in my seat. When I came back, it was too late; her testimony was over.

Our committee did a service to the people of New Brunswick, Nova Scotia and Newfoundland.

Some Hon. Senators: Hear, hear!

Senator Buchanan: There is no question about it; no doubt about it.

Senator Kinsella: Thanks to Senator Lynch-Staunton's motion.

Senator Buchanan: Yes, our leader moved the motion to have the committee travel. However, I must tell honourable senators that I suggested it to him. At any rate, the committee did travel, and it was an experience I will never forget.

• (1430)

Over the last 30 years, I have been a member of many committees and have travelled to many parts of Nova Scotia during my time in our legislature. On my appointment to the Senate, I travelled to various parts of the country to hear people express their opinions on certain matters affecting them. This tax will have no effect in Ottawa, Toronto, or Winnipeg, but it will affect people in Nova Scotia, New Brunswick, and Newfoundland. Bearing that in mind, where were the hearings held? They were held in Ottawa, Ontario. No one here even knows what the tax is all about.

The committee did eventually travel to the East Coast where we heard from the real people of our three provinces. We heard from the retailers, the business people, the pensioners, the retailers, and the union representatives of our three provinces, all of whom opposed the HST.

Real union leaders would never go against the wishes of their membership. We heard from the Nova Scotia Government Employees Union, as well as from three other unions from Nova Scotia, New Brunswick, and Newfoundland. We also heard from the president of the Nova Scotia Federation of Labour. If honourable senators wish to see the copies of the briefs which were presented by the witnesses to the committee, I would suggest that you contact the committee chairman, and he will make arrangements to provide them to you. Every witness spoke about the hardships the HST would cause their membership. Why?

Senator Cools: Do not cry, now, Senator Buchanan.

Senator Buchanan: The imposition of this tax will mean an increase in electricity and other power rates. Taxi fares will go up. Let me read something funny to you.

Senator Graham: Save that for the next speech.

Senator Buchanan: Honourable senators, let me give you an example of how silly this tax is. A former colleague of mine and cabinet minister in the Nova Scotia legislature, Ron Russell, told me that the Honourable Paul Martin was in Dartmouth talking to the Chamber of Commerce. He was told that people were complaining, for instance, that the price of a haircut would go up. In response, he said that should not be a concern because now, whenever the barber buys a pair of scissors — and I do not know any barbers who use scissors nowadays — he pays the tax on those scissors, and he will be entitled to a tax input credit.

“Therefore,” said Paul Martin, “the price of a haircut will come down.” Since those remarks, I have spoken to a number of barbers and they all crack up when I tell them that story. One barber, a gentleman who passed away quite recently in my riding, brought out the scissors he used and he asked, “Do you know how long I have had these scissors, Ron?” I said, “No. How long?” “Twenty-five years,” he said. The tax input credit for the purchase of scissors that Paul Martin spoke of will not make a difference at all.

Senator Graham: Does Ron Russell need scissors?

Senator Buchanan: No, he does not. He is an excellent cabinet minister, who has been elected in every election that I ran in with him.

I will restrict myself right now to the committee report on tax-included pricing. The committee, after listening to 90 or 100 witnesses, 95 per cent of whom were opposed to tax-included pricing, agreed that tax-included pricing should be deleted from the HST bill. It is, effectively, deleted, because it will not take effect until 51 per cent of Canadians agree to tax-included pricing. Albertans will not agree to it because they do not have a sales tax. With Ralph Klein back in for at least another 100 years, they will never have a sales tax. Ontarians have definitively stated that they would not have a harmonized tax and tax-included pricing. It just will not happen, which might be unfortunate because I believe in tax-included pricing Canada-wide, from British Columbia to Newfoundland, including the territories.

I congratulate the chairman and the deputy chairman who ensured that this tax-included pricing be deferred, perhaps forever, from the HST bill. I seconded the motion; therefore, I am rather proud that I was able to participate. I will certainly vote that the report, as amended to exclude the tax-included pricing, be adopted.

Hon. Senators: Hear, hear!

The Hon. the Speaker: It was moved by the Honourable Senator Kirby, seconded by the Honourable Senator Maheu, that this report be adopted. Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

THIRD READING—MOTIONS IN AMENDMENT—
VOTES DEFERRED

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

Hon. B. Alasdair Graham (Deputy Leader of the Government): With leave, now.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, is it your pleasure to adopt the motion?

Senator Graham: Honourable senators, before we begin the debate on third reading, by way of explanation, several speakers from the opposition wish to move amendments to Bill C-70. As well, as indicated, Senator Buchanan will have another offering for the chamber this afternoon. There is agreement that any amendments which may be proposed this afternoon as well as the question on the main motion will be put by the Speaker tomorrow afternoon at 3:30 p.m. The amendments will be voted on separately and sequentially. Consequently, there will be a 15-minute bell beginning at 3:15 p.m., and the votes will take place at 3:30 p.m. I believe we have general agreement for that procedure.

Hon. Noël A. Kinsella: Honourable senators, I concur with Senator Graham’s explanation of our agreement as to the *modus operandi* concerning the procedure on this matter. It is also our understanding that the bells will ring tomorrow afternoon at 3:15 p.m. for the 3:30 p.m. vote, when we will deal with all the amendments *seriatim*.

Hon. Jean-Maurice Simard: Honourable senators, our whip and the Deputy Leader of the Government suggested that we agree to start voting on this report and bill tomorrow at 3:30 p.m. In order to allow debate on third reading, may I suggest that we sit tonight or, alternatively, tomorrow morning?

• (1440)

Senator Graham: It is my understanding that if we have this agreement, all speeches would be made this afternoon. If we go beyond six o’clock, we will return at eight o’clock, and then sit again tomorrow at two o’clock. The agreement is that all votes will be taken at 3:30 p.m. tomorrow, with the bells ringing at 3:15 p.m.

Hon. Marcel Prud’homme: Honourable senators, I think the agreement is unanimous. Looking at my friend Senator Lawson, who always wants someone to speak on behalf of the independents, it seems that the independents have also agreed to the agreement that took place.

The Hon. the Speaker: It is agreed, then, honourable senators, that the bells will ring at 3:15 p.m. tomorrow, that the voting will begin at 3:30 p.m., and that the votes will be taken sequentially, starting with the last amendment proposed and moving to the first, as is the normal order, and then the main motion. It is further agreed that if we need to sit this evening, we will sit this evening and we will meet again tomorrow at two o’clock. Is that correct?

Senator Graham: That is correct. Of course, we want to provide all honourable senators who wish to speak the opportunity to do so.

The Hon. the Speaker: If that is the agreement of the house, that is the basis on which we will proceed tomorrow. We are now on third reading.

Hon. John Buchanan: Now comes the other half!

Senator Bonnell: Tell us about the barber.

Senator Buchanan: You have already heard about that. It is interesting that the honourable senator mentions that. I would say that you do not have to worry about such things in P.E.I. Their legislators were very smart. They held public consultations on this matter, and the leader of the Liberal government in Prince Edward Island, Catherine Callbeck, told the Senate committee:

After considering the matter, the Committee has come to the conclusion that the Province of Prince Edward Island should not harmonize its sales tax with the federal GST. The Committee believes that the sales tax harmonization proposal would not be beneficial to the Province and its people. As well, harmonization would result in diminished provincial control over a major revenue raising measure.

Honourable senators, in Nova Scotia, New Brunswick and Newfoundland, we gave up our historic right to set our tax rates to the Government of Canada. Can you imagine what will happen when that gets out during an election campaign, namely, that John Savage and the provincial government gave up their historic rights in favour of Ottawa? To put it the other way around, two provinces can say to Nova Scotia: "We are increasing the rates, and you must, too." What kind of democracy is that for the people of Nova Scotia? P.E.I. was smart. They would not allow provincial control to be diminished. I continue to quote from Catherine Callbeck's remarks:

The Committee recognizes that non-harmonization could potentially have a negative impact on some sectors of the Island economy and that down the road government may need to make adjustments in this regard. Therefore, it is recommended that the Government of Prince Edward Island not enter into the sales tax harmonization as proposed by the Government of Canada.

This is the recommendation that was unanimously accepted in the P.E.I. legislature by Liberals and Conservatives and, with the turnover of government, adopted by Pat Binns and the new Conservative government.

The gentleman applauding was the one who invited Nova Scotians to come over to P.E.I. and do their buying over there, because they could buy things 8 per cent cheaper. I thought that was very laudable on his part, which means that he will be voting with us.

Senator Bonnell: All the senior citizens will be coming over to P.E.I.

Senator Buchanan: Yes, busloads of them will be coming over. Why will we lose that revenue in Nova Scotia? Because of the HST, that is why.

Senator Lawson has left the chamber. I was about to tell him again that the NSGEU, the Nova Scotia federation of labour, the New Brunswick federation of labour, the Newfoundland federation of labour and the Nova Scotia Teachers Union were all there, representing all union people in our provinces as one united voice saying, "The HST is bad for the people who belong to the unions, the working people of our three provinces." I know that Senator Lawson, being the person he is, and has been over the last years, will certainly be voting against this terrible tax that has been foisted upon the people and the unionists of our provinces.

For those of you who are not aware of this, the Nova Scotia government has said, through its Department of Finance that, "We have analyzed this HST and it will cost the consumers of Nova Scotia \$84 million." The Minister of Finance, Bernie Boudreau, was asked: "What do you think about that?" He said, "We will have to analyze those figures." He wanted to analyze his own figures! I have not yet heard him analyze them. The net is \$84 million. Why is that?

They call this a tax that is consumer neutral. In other words, consumers will save this much and pay this much, and it will be neutral and will not cost anyone anything. Yet the provincial Department of Finance is saying that it will cost \$84 million. My experience with estimates of that nature is that they never go down; they go up. The final cost will probably be closer to \$100 million. Why is that?

Let us look at what will be decreased, namely, the price of automobiles, by 3.7 per cent. However, the Government of Nova Scotia immediately put on a 2-per-cent surcharge. Therefore citizens in that area will not save 3.7 per cent; they will save only 1.7 per cent whenever they buy a new automobile. Bill Gillis said, "People will buy automobiles every two years." I do not know how many pensioners, seniors, students and people earning in the range of \$25,000 to \$30,000 a year will buy a car every two years. I suggest that the answer is very few.

Let us talk about refrigerator freezers. I have one. I have had it for 15 years. I do not intend to get rid of it. Maybe in another 15 years I will buy another one, God willing, if I am still around. I told my wife, "I will save 3.7 per cent when I get a new refrigerator freezer in the next 10 years." She said, "Why do you not buy it now?" I will not buy it now.

What about those great big console stereos? You know what? You will pay 3.7 per cent less on those. You will probably buy one every year, I guess, the same as people buy children's clothing every week or every month.

Fur coats will also be more expensive. I was in Northwood Manor in Halifax and I thought about doing a poll on that subject, but I decided against it. How many people will buy a fur coat next week, next year or in two years' time? You know what the result of the poll would be. There is no question that you will save money on these big-ticket items, such as items of furniture, but over a long period of time.

Why is it that our own provincial Department of Finance has said that it will cost consumers \$84 million? Here is why: Electricity bills are going up; home heating oil costs are going up; gasoline at the pump is going up by 8 per cent on April 1, if this bill goes through — it goes up from about 58 or 59 cents a litre to 63 or 64 cents. Who will be blamed? Not us. You people will be blamed for that because you should never have started this exercise in the first place.

There is also the cost of children's shoes and clothing under \$100. The price is increasing on all of those items. Used cars and stamps will also cost more. I can buy my stamps in P.E.I. for 48 cents each. In Nova Scotia, a stamp will cost me 52 cents. As I told you before, I know people who will buy their stamps in P.E.I. through their relatives, who will mail them over to them. People who do a lot of mailing will save hundreds of dollars. The cost of funerals, haircuts, well drilling, and so on, is all going up. The cost of new homes and home construction is also going up by 8 per cent. Is it any wonder that those people who appeared before our committee were concerned?

Here is the advice of one fellow who says that if you purchase an automobile, he suggested that you leave it in the garage or driveway. As you continually purchase the gasoline to run it, you eventually end up paying more taxes than you saved. If you buy a stove, refrigerator or other appliances, he suggested that you not plug them in or use them. He suggested that you just leave them as an adornment in your kitchen because the minute you plug them in, you will be paying the electricity on them. As you continue to use them, you pay higher taxes.

Here are more of his suggestions. Listen to these carefully. To avoid paying higher taxes through the HST, he suggests the following tax avoidance.

One, do not die. You have to pay funeral expenses.

Two, let your hair grow.

• (1450)

This is the guy who lined all politicians up and had two Uzis in his hands and said, "All right, you guys and gals..." Remember him?

Cover the holes in your shoes with wood. Do not take them and get them fixed.

Four, do not dry-clean.

Honourable senators, my rumpled blue suit has not been dry-cleaned. Just tell people that your stained clothes are the new fashion.

Five, do not clothe your children.

Now, as you know, with the accounting and law, they will tax it all, but he says that we should study accounting and law, and any other service that you may require, so that you need not use lawyers and all those other professionals.

Freeze during the winter. You cannot use fuel oil any more.

Eight, use candles and eat more canned food.

Nine, buy a bicycle or walk.

Ten, do not brush your teeth.

That is what will happen in our three provinces if you people continue to put this foolish bill through.

Here is another one that is very interesting. When I first looked at this, I said, "This cannot be." I checked it, and it is. If this HST goes through, if a multinational company buys a \$30,000 car for a manager, do you know how much BST or HST they will pay? Nothing. No tax. They get it all back. However, if a regular Nova Scotian buys the same \$30,000 car, he will pay \$4,500 BST. If a multinational company buys a \$3,500 computer, they pay no HST. If a Nova Scotian student buys the same computer, he or she pays \$525. If an oil company buys \$300 in boots and coveralls, they pay no BST. If the same worker buys the same work clothes for himself or herself for \$300, he or she pays \$45. The company pays nothing. That is how stupid this tax is.

I have a letter here from a very dear lady. I have known her for years, although I do not know her politics. Her name is Loretta J. Smith, and she sat all morning and all afternoon, waiting to be a walk-on witness. During her testimony, she said:

Based on my previous expenses for fuel, lights and gasoline, I will be forced to spend an additional \$346.74. This does not include the additional 8 per cent tax on various other items which are now not taxed provincially. The added burden of this tax will be greater for families with children who now must pay only the 7 per cent on less expensive clothing and footwear. The cost of a stamp will increase from 48 cents to 52 cents, but only in the three Atlantic Provinces. Funeral expenses will increase by 8 per cent. We do not yet know the full details of this Blended Tax, and in fact neither do the MLAs who are so determined to foist it on us. This diabolical tax grab has been so hastily contrived that the details were not worked out prior to the agreement of the affected Provinces.

That is true. When they signed the agreement, they did not know the details of the tax. They had no idea. They got the billion dollars. The Minister of Finance in Newfoundland said, "They gave me a cheque that day; Paul Martin gave me \$348 million." Bernie Boudreau received over \$200 million, as did Frank McKenna.

Senator Berntson: How could they do that? Under what authority? The bill has not passed.

Senator Buchanan: It is an interesting thing as to how they did it. Some people say it was wrong, including the Auditor General, but we will have to wait and see how that works out.

Honourable senators, this tax is neither fair nor just. It most certainly is not democratic. The brunt of this tax will affect most seriously those who are least able to afford it: seniors, people working on minimum wages, et cetera.

I want to mention a couple of other items. Municipal councillors represent the real grassroots. In politics, they are the people who are called most of the time for the small items, but those are big items for some people. At the next level are the provincial MLAs, and at the next level are the MPs. That is the way it has always been. Here is what will happen in our three provinces with the municipalities and the municipal taxpayers — and this comes from someone who is probably one of the best municipal politicians in Canada. His name is Walter Fitzgerald, commonly known as Goodie. To the committee, he said:

Halifax Regional Municipality strongly recommends that the proposed legislation of the Harmonized Sales Tax, ("HST") be amended to neutralize the impact of the tax on the municipality and its taxpayers.

The implementation of the HST and the application of this tax at 15 per cent on all goods and services, currently taxed under the GST system at the existing rate of 7 per cent, will have a negative financial impact on Halifax Regional Municipality.

By the way, it is the largest municipality in Canada.

With the implementation of the HST, the municipality will not only pay the additional 8 per cent of the HST component on all goods and services, but will be limited in its ability to recover the tax paid... The rebate notwithstanding, the annual cost increase is in excess of \$5 million to the residential and commercial property taxpayers in Halifax Regional Municipality. This "tax downloading" affects our overall budget and will result in a net municipal tax increase of 1.8 per cent, on average —

for everyone in the Halifax Regional Municipality.

Since the province of Nova Scotia did not previously tax its municipalities, this, in effect, represents a new tax...

Those of you who say this is not a new tax, forget it. It is a new tax. It is a new tax for seniors, low- and middle-income people, pensioners, municipalities and a few others. This is a brand new tax.

Here is what the municipalities very reasonably want: They want the 15 per cent HST to be increased from 57.14 to 80 per cent, effectively restoring the neutral position of the Halifax Regional Municipality with respect to the province's conversion to the HST. This is not just Walter Fitzgerald, the mayor, speaking. He was speaking, certainly, for his own municipality, but Dan Boyd from the small municipality of East Heads was there telling us how much it will cost that small municipality. The Nova Scotia Federation of Municipalities said the same thing. Every municipality said it would cost in excess of \$12 million to \$15 million for the municipal taxpayers in Nova Scotia.

Senator Robertson, the same thing will happen in New Brunswick. Senator Cochrane, the same thing will happen in Newfoundland. We are all in the same boat where the Government of Canada and the governments of the three provinces put us for the municipalities.

Assumption Vie and Maritime Life manage segregated funds for residents of Nova Scotia and New Brunswick. Under the proposed bill, only segregated funds and trusts in the harmonized provinces will pay the additional 8-per-cent tax on the investment administration fee charged by the issuer. That simply means that if I go in to buy a segregated fund and I pay them a management fee, I must pay them 8 per cent more. However, if I go to one of the companies in P.E.I., I can get it without the 8 per cent. If I go to Ontario, Quebec or anywhere else, I do not have to pay the 8 per cent. However, I think that will be handled. I believe it has been handled in one way for a couple of years by the provincial governments, and it probably will be again.

Honourable senators, that is about all I have to say.

• (1500)

Honourable senators will realize that I am not happy with the HST. However, I am happy that the subject of tax-included pricing will not be raised again, hopefully, for a long time.

I have an amendment which I should like to table. Simply put, Canadians like to treat each other reasonably and fairly. However, one group in Canada has not been treated fairly and will be treated even more unfairly with the introduction of the HST. The group I speak of is medical doctors, an important segment of our society.

I know people say, "Oh, those doctors, look at all the money they make." That is not so, honourable senators. Some doctors are in a marginal situation right now.

As Senator Stewart and others know, in the last four years, 90 to 100 doctors have left Nova Scotia to go to the United States, Australia or other places. The introduction of the HST will be the straw that breaks their backs, and even more will pack up and leave. The situation in East Hants Hospital in Nova Scotia is close to dangerous. Hospitals in Cape Breton are in the same situation. They do not have the surgeons or orthopaedic surgeons they require. GPs are packing up. Dr. Kimball and Dr. Bell have both packed up. East Hants is concerned that they will lose more doctors. The reason is that doctors, unlike any small business in this country, are not permitted the HST tax-input credits. Why? I have heard the argument that that applies to all health service providers. Honourable senators, that is not quite true. Dentists, physiotherapists and others, although they are not eligible for the tax-input credit, can pass the cost on to their patients. Doctors cannot do that. The Government of Canada has stipulated that they cannot pass that cost on to their patients. They must "absorb it." They are boxed in, much in the same as Senator Kirby was boxed in the other day. The HST will be 15 per cent which means that, in our three provinces, doctors will have to absorb \$4.7 million themselves.

When Dr. Cynthia Forbes, president of the Nova Scotia Medical Association, in answer to my question, "Doctor, are you concerned with any doctors leaving?" replied, "Absolutely, we are very concerned with more doctors leaving." The same situation applies to New Brunswick and Newfoundland.

The introduction of this measure, honourable senators, simply means that doctors will be zero-rated.

MOTIONS IN AMENDMENT

Hon. John Buchanan: The first motion in amendment I would move, honourable senators, is as follows:

That clause 93.1 of Bill C-70 be not now read a third time but that it be amended, on page 131, by replacing line 29 with the following:

"93.1 Section 5, Part II of Schedule V to the Act is replaced by the following:

5. A supply (other than a zero-rated supply) made by a medical practitioner of a consultative, diagnostic, treatment or health care service rendered to an individual (other than a surgical or dental service that is performed for cosmetic purposes and not for medical or reconstructive purposes).

93.2(1) The portion of section 6 of Part II."

My next motion in amendment is as follows:

That Bill C-70 be not now read a third time but that it be amended, on page 132, by adding the following after line 24:

"95.1 "Section 9 of Part II of Schedule V to the Act is repealed."

The next amendment I would propose, honourable senators is as follows:

That clause 136 of Bill C-70 be not now read a third time but that it be amended, on page 156, by replacing lines 30 and 31 with the following:

"provision of Part II of Schedule V and a service related to".

The last amendment I would propose, honourable senators is:

That Bill C-70 be not now read a third time but that it be amended, on page 157, by adding after line 20 the following:

"136.1 Part II of Schedule VI, to the Act is amended by adding the following after section 40:

41. A supply of any property or service but only if, and to the extent that, the consideration for the supply is payable or reimbursed by the government under a plan established under an Act of the legislature of the province to provide for health care services for all insured persons of the province."

I have prepared a French translation of my motions in amendment.

The Hon. the Speaker: It was moved by the Honourable Senator Buchanan and seconded by the Honourable Senator Oliver that clause 93.1 of Bill C-70 be not now read a third time but that it be amended, on page 131, by replacing line 29 with the following —

Hon. Senators: Dispense.

The Hon. the Speaker: Honourable senators, it is agreed that all motions in amendment will be dealt with tomorrow.

Does any honourable senator wish to speak to these motions in amendment?

Senator Michael Kirby: I listened with considerable interest to the empathy which Senator Buchanan has expressed for people in Nova Scotia who will be impacted by a tax on commodities such as electricity and heating oil.

My question is this: Is it reasonable for me to conclude that Senator Buchanan is clearly opposed to the principle of taxing electricity, heating oil and so on? Am I correct that it is his opposition to that principle which has led him to this conclusion?

Senator Buchanan: That is partially correct. There are times when it becomes essential that governments tax certain commodities that normally governments would not. Of course, electricity, home heating oil, and so on are the commodities to which I am referring.

In the words of a gentleman for whom I have much respect most of the time, whose father was an eminent member of this Senate and a member of the federal government for many years because of my late uncle Angus, Minister Paul Martin, junior, the GST rebate system for the people I just mentioned is “working wonderfully well.”

If taxation of these commodities is necessary, surely it must coincide with the implementation of a system of generous rebates to those people who cannot afford it.

I agree with Minister Paul Martin that the GST rebate system is working extremely well and we will have an amendment which will simply ask that the HST be part of the GST rebate system because it has worked well. That is not just my opinion, it is also the opinion of Senator Kirby's colleague in cabinet.

Senator Kirby: I am given to believe that Senator Buchanan has said that he is not opposed to the principle of taxing things like electricity and heating oil and so on; is that correct?

The reason I am raising the question, of course, is that, if the honourable senator is saying that he is opposed to taxing these commodities in principle, it would be interesting for me to understand how he could have accepted his appointment to this place, given the fact that he was appointed precisely to get the GST bill through which imposes a sales tax on exactly the litany of items Senator Buchanan mentioned this afternoon.

• (1510)

If it is not an issue of principle, would the honourable senator please explain to me why he voted for all the things he did when he was appointed, given that he now so passionately opposes them? It seems to me that there is a considerable inconsistency there, although that is not necessarily unusual in his case. It would help me substantially to understand where the honourable senator is coming from.

Senator Buchanan: Honourable senators, this is great. It reminds me of a time 24 years ago in the Nova Scotia legislature when Senator Kirby would sit up in the gallery and watch our great question periods. I loved to ask and answer questions.

Honourable senators, I have a simple answer for Senator Kirby. I was not appointed to this place to do what he just suggested. I have always suspected that reform of the Senate would occur from outside. For 13 years, I and other premiers tried that, right up to the Meech Lake accord. All our attempts from 1977 right up to the 1990s were defeated for one reason or another.

Therefore, when I was offered the opportunity to join this august group of Canadians to help reform the Senate from within, I accepted that challenge. We have done a lot over the last three or four years to reform the Senate and elevate it in the eyes of Canadians. Canadians now have better respect for the Senate

because of the fight we put up over the HST, the Pearson bill, the electoral boundaries redistribution bill and others.

People are beginning to express the belief that the Senate can do a great job of protecting the regions of Canada when they need protection. We will do that, which is what I was appointed to do.

Senator Kirby: Thank you, Senator Buchanan. I believe the honourable senator's answer to my question is that this is not an issue of principle for him.

The Hon. the Speaker: Honourable senators, I must remind you that there cannot be a secondary debate during the questioning.

Hon. Donald H. Oliver: Honourable senators, it will be extremely difficult for me to follow the eloquence of Senator Buchanan. It will not be difficult for members opposite to understand how he got elected so many times. However, if you will bear with me, I will make a few remarks on Bill C-70.

The study of the Standing Senate Committee on Banking, Trade and Commerce on this bill was a study in democracy at work. It showed the Senate at its best — as a body of sober second thought. It also showed the weakness of the elected chamber where the opposition is fractured and based not on national interests but on one-issue regional parties. The elected chamber rejected the option of listening to the people. The Senate took the time not only to study the legislation but to travel to hear 200 witnesses in the three provinces affected by this new harmonized tax. The House of Commons did not travel to the Atlantic provinces and did not listen to the people. Its study was cursory, shallow and perfunctory at best.

The Standing Senate Committee on Banking, Trade and Commerce, representing this body of sober second thought, weighed the evidence, listened to the experts, including three provincial finance ministers, and unanimously decided to amend Bill C-70 to more accurately reflect the interests of all Canadians.

As the lead editorial in the *Chronicle-Herald* of March 8 stated:

The Senate Banking Committee would have to be pretty thick not to conclude from witnesses it heard in Atlantic Canada this week that the blended sales tax needs either to be drastically changed or scrapped.

The editorial went on to say:

...time and again, the Senators were thanked just for showing up and listening, though people were in no mood to be fobbed off with a polite hearing and no action. The Committee was repeatedly urged to do its job of applying “sober second thought” to the tax.

The editorial stated further:

...the Senate has rarely had a chance to prove its relevance to the public.

We, the Progressive Conservative senators from Atlantic Canada, got the message and we have delivered.

Honourable senators, I agree with the theory of harmonization. It makes good business sense because it can be efficient and reduce costs to the consumer. I agree that the goal of a harmonized GST-PST is laudable. However, I agree with dozens of witnesses who reiterated that without the agreement of all the other provinces at the same time, the result of tax inclusive pricing is a network of multi-rate, partly harmonized systems. Through the chain, from the initial purchase of merchandise for resale to the final sale to the customer, the production, distribution, advertising, and sale of the merchandise becomes prohibitively more costly to the retailer and eventually this price is passed on to the consumer.

We on the Progressive Conservative side were deeply moved by many of the presentations from students, seniors and Canadians with low incomes about the effect of tax-in pricing and how it would produce increased costs to these consumers. We carefully and gingerly asked questions of many of the witnesses in order to elicit the best information we could on what, if anything, could be done to mitigate the problem.

I am from Nova Scotia, and I was moved by the evidence of witnesses such as the Progressive Conservative leader of the province of Nova Scotia, Mr. John Hamm, when he said:

...let's make no mistake about the impact of the HST on the consumer. According to the provinces' own reports, the HST will mean Nova Scotians will pay at least 84 million dollars more in consumer taxes. Frankly, I believe it will be significantly higher.

Dr. Hamm went on to say that the HST will mean Nova Scotians pay approximately \$15 million more in taxes on home heating fuel. It will mean Nova Scotians will pay \$15 million more in taxes on electricity. It will mean Nova Scotians will pay approximately \$54 million more in taxes on gasoline. These are not discretionary items. These are items that we have no choice but to buy. And these three items alone represent \$84 million in new consumer taxes to Nova Scotians.

I wish to commend Senator Ethel Cochrane for her resolution aimed at alleviating the pain attendant on such a burden, which was unanimously adopted by the Standing Senate Committee on Banking, Trade and Commerce and tabled by Senator Kirby with the amendments to remove the TIP. Senator Cochrane's resolution urged the three Atlantic provinces to produce an HST rebate similar to the GST rebate to compensate the working poor,

people on social assistance, senior citizens, students and other low-income Canadians for the added burden imposed by this tax.

In his remarks, Senator Kirby referred at great length to the APEC report. The Atlantic Provinces Economic Council is a major think tank in Atlantic Canada. It did indeed say in its preliminary analysis that the tax change proposed would be beneficial to the Atlantic economy, but APEC also warned senators that there are several irritants to the proposed HST which could seriously reduce the effectiveness of the new regime. That means that it could cause increased personal taxes and higher costs to those in Atlantic Canada who cannot afford it, or who can least afford it.

APEC raised three major issues of concern, and I canvassed these issues with a variety of witnesses in New Brunswick, Newfoundland and Labrador, and Nova Scotia. I am concerned that the tax burden on Atlantic manufacturers and retailers not be more onerous than it already is. Other organizations facing rebate problems are hospitals, municipalities, public colleges and charities. I will, at the conclusion of my remarks, move an amendment to try to rectify that wrong.

APEC said that tax-in pricing is a major issue and, fortunately, by the unanimous vote of the Standing Senate Committee on Banking, Trade and Commerce, tax-in pricing will be taken out of the bill. The other two areas that have gained prominence and caused great concern for APEC and for me are those that relate specifically to the tax-evasion effects created by the tax in certain sectors, and the financing problems created by the new tax.

I raised these latter two concerns with both the Minister of National Revenue, the Honourable Jane Stewart, and the Minister of Finance, the Honourable Paul Martin. I will briefly describe the problem and then provide the answers given to me by the two ministers. Under the HST, the labour component of many installed products will now be taxed at 15 per cent rather than 7 per cent. The material or product being installed is, however, likely to fall in price. There may be an increased incentive to drive the labour component of these installed goods underground. Consumers may choose to buy the material product of a do-it-yourself job and then covertly hire the services of a craftsperson to install the product, thereby avoiding HST on the labour component of the work. With the tax going up from 7 per cent to 15 per cent, APEC said there is a greater incentive to drive this work underground.

• (1520)

The financing issues, which is the third point raised by APEC, focused on the need for an increase in working capital. While Atlantic firms will now be entitled to receive a full tax credit on purchased inputs, they are also likely to need increased sources of working capital to front the cost of paying a higher tax. Particularly troublesome is the 15-per-cent tax charged on supplies imported into the region from other Canadian provinces.

Many firms in Atlantic Canada source many, if not most, of their inputs from other parts of Canada, and mainly from Ontario. Therefore, the costs of increased working capital are likely to be significant. Firms in Ontario and Quebec, on the other hand, will be able to finance their working capital requirements from collected tax dollars and thereby reduce their financing requirements.

Here are the undertakings I got from the ministers. Minister Stewart said, among other things:

The issue of cash flow for business is an important one. As you know, they pay their tax and then complete their paper work. We make the input tax credits or pay the tax credits. For businesses to have confidence in the turn-around of that ITC system is critically important, and we take it very seriously.

She went on to say:

We have a number of strategies in place that focus on that, including increased service, increased levels of staffing. Mr. Burpee has responsibility for that area of the department. I am glad to have him comment directly on our new strategies.

Mr. Mike Burpee, staff of the Department of National Revenue, then said:

My advice to any business that wants to ensure they get the quickest possible refunds is to take us up, first of all, on filing their returns electronically, which they are able to do, and allowing us to direct deposit their funds or their credits.

Later, Minister Stewart said:

Mr. Burpee indicated some strategies that individual tax filers can use to ensure that time is mitigated and reduced to, hopefully, no longer than three weeks using electronic filing and other methods.

Then, the Minister of Finance, Mr. Paul Martin, stated in response to the same series of questions:

Since we isolate this as a timing problem, Minister Stewart in the Department of National Revenue has said they will substantially accelerate the rebate program within the MNR. This is by far the best thing that the government can do.

There are a couple of other things. First, businesses can file monthly. If businesses file monthly, obviously that will accelerate the process. The businesses at the same time will be charging 15 per cent, they will be charging the larger amount of the sales tax and they will be holding on to that money until such time as they file. There is actually a flip where they actually benefit from it.

He added:

I know that Minister Stewart is looking at a number of other programs to deal with your problem. The problem you raise is a valid problem and the government intends to deal with it as expeditiously as possible. As far as the companies, there are many things that they can do as well to minimize that problem.

There is another matter I should like to raise about this democratic experience of travelling in Atlantic Canada and listening to the people. The matter was alluded to by Senator Kirby in his remarks yesterday when reporting the bill with amendments. This bill involves a tax. It will affect all Canadians in the harmonized area. We heard complaints and concerns and felt the anxieties from retailers, manufacturers, consumers and politicians from all walks of life about the fact that they had not been consulted and could not understand what was going on. They could not understand the timing, they could not understand how the tax would impact them, and they had enormous difficulty finding out by telephone, by fax, or by conversation with bureaucrats exactly what was happening in relation to the HST.

The Senate has been forewarned. We, as a body of sober second thought, should use this experience and this opportunity to warn the government that they cannot expect easy and speedy passage of sloppy legislation, poorly conceived and even more poorly communicated, because that does a disservice to the institution of Parliament and causes unnecessary frustration and anxiety in our citizens.

MOTIONS IN AMENDMENT

Hon. Donald H. Oliver: In conclusion, honourable senators, I should now like to move two amendments to the bill. The first relates to the question of rebates for hospitals, public colleges, municipalities, and non-profit organizations.

I move, seconded by Senator Kinsella:

That clause 69 of Bill C-70 be not now read a third time but that it be amended,

(a) on page 91, by deleting lines 42 to 46;

(b) on page 92, by deleting lines 1 to 4; and

(c) by renumbering subclauses (2) to (12) as subclauses (1) to (11), and any cross-references thereto accordingly.

I also move:

That Bill C-70 be not now read a third time but that it be amended, on pages 95 to 98, by deleting clause 69.1.

I also move, seconded by Senator Kinsella:

That clause 149.1 of Bill C-70 be not now read a third time but that it be amended, on page 164, by replacing line 8 with the following:

“149.1 Schedule VI to the Act is amended by adding the following after Part X:

PART XI

READING MATERIAL

1. A supply of a printed book, but not including anything that is or the main component of which is

- (a) a newspaper
- (b) a magazine or periodical acquired otherwise than by way of subscription;
- (c) a magazine or periodical in which the printed space devoted to advertising is more than 5% of the total printed space;
- (d) a brochure or pamphlet;
- (e) a sales catalogue, a price list or advertising material;
- (f) a warranty booklet or an owners' manual;
- (g) a book designed primarily for writing on;
- (h) a colouring book or a book designed primarily for drawing on or affixing thereto, or inserting therein, items such as clippings, pictures, coins, stamps, or stickers;
- (i) a cut-out book or a press-out book;
- (j) a program relating to an event or performance;
- (k) an agenda, calendar, syllabus or timetable;
- (l) a directory, and assemblage of charts or an assemblage of streets or roads maps, but not including
 - (i) a guidebook, or
 - (ii) an atlas that consists in whole or in part of maps other than the street or road maps;
- (m) a rate book;
- (n) an assemblage of blueprints, patterns or stencils;

(o) prescribed property; or

(p) an assemblage or collection of, or any item similar to, items included in any of the paragraphs (a) to (o).

Section 149.2(1) Section 4 of Schedule VII to the”.

The Hon. the Speaker: It was moved by the Honourable Senator Oliver, seconded by the Honourable Senator Kinsella, that clause 69 of Bill C-70 be not now read a third time but that it be amended —

Hon. Senators: Dispense.

The Hon. the Speaker: Honourable senators, it is agreed that all motions in amendment will be dealt with tomorrow.

Hon. Ethel Cochrane: Honourable senators, in considering Bill C-70, I intend to ignore those parts which involve changes to the administration of the federal GST. I understand that these are desirable changes which should have our support.

That is not the case with the remaining parts of this bill, which deal with the harmonized sales tax. I travelled with the Standing Senate Committee on Banking, Trade and Commerce to St. John's and Halifax last week. During those hearings, I was forcibly struck by the depth of the concern felt by the many disadvantaged people in Atlantic Canada about the effect the harmonized sales tax will have on their lives.

• (1530)

Both the federal and provincial governments have repeatedly assured consumers that this tax will be revenue neutral, that increases in some costs will be balanced by decreases in others. Honourable senators, I ask you to understand that if this is true at all, it is true only in the overall sense of total provincial tax levels. There will be winners in this new tax structure. Businesses will benefit tremendously, as will consumers who can afford big-ticket items. However, there are very many people in Atlantic Canada who cannot afford to rush out next month to buy a new car, to buy large appliances — yes, or even fur coats.

In my own province of Newfoundland and Labrador, 78,000 people now depend upon social assistance to survive. There are 18,000 people, plus their families, who rely on benefits from TAGS, the Atlantic Groundfish Strategy. Another 54,000 people and their families depend upon Employment Insurance. More than 150,000 people in the province — 25 per cent of the population — have no disposable income. The TAGS benefits are about to run out, putting more people on social assistance. The EI benefits have been reduced, despite the massive surplus the government has in the EI account, and the eligible benefits period is now shorter.

In addition, we have thousands of seniors who live on fixed incomes, thousands of students with inadequate incomes and student loans, and thousands more families who survive on very low wages, often from just part-time jobs, as the witnesses who appeared before us testified.

All of these people spend their small incomes on necessities, the essentials. They do not have discretionary income to spend on cars, fur coats and appliances. When I think back to the committee's hearings, I am reminded of the little elderly lady in Halifax whom Senator Buchanan mentioned. She sat patiently and listened to the testimony from one o'clock in the afternoon until eight o'clock in the evening before she was finally allowed a couple of minutes to tell us she simply cannot afford higher prices for her heat, for her electricity, for her transportation, and for her daily living costs.

I think of another woman in Halifax who works for Tim Horton's. She has a very small income and children to support. She is one of the many thousands of Atlantic Canadians who live from pay cheque to pay cheque with no money left over for frills or frivolous expenses, and often not enough to cover the necessities. She told us about her genuine fear that, when the HST comes into effect, she may simply be unable to feed and clothe her two boys.

Honourable senators, this woman, like so many others, cannot afford to pay 8 per cent more for her heat, for her hydro, for her children's clothing, for shoes, for haircuts and all of the other day-to-day, month-by-month expenses that are unavoidable necessities. She does not have 8 per cent flexibility in her family budget. The day before pay day, she is broke. Where is that extra money supposed to come from? We cannot try to tell her that it will be fine, that she will make up for this added expense the next time she buys a car or a new stove. She cannot afford a new car or stove, or any of the other big-ticket items the government says will make all of this even out for her. All she sees is added costs for all of the purchases she and her family must make, all of the services they must have, simply in order to live. Because of those added costs, her children will have less food and less clothing, and she will never be able to save a down payment for that new car or buy a new stove.

What will happen now, if her plumbing or her old stove needs to be repaired? She will not be able to afford to have them fixed. Those services will now cost 8 per cent more.

These are the taxpayers who will provide most of the government's revenue from the harmonized sales tax. I think you should consider their priorities, honourable senators. They really do not care about the issues that have consumed so much of the committee's and the government's attention over this bill. They do not care about tax-included pricing, for example.

I know honourable senators have seen a survey from the Department of Finance which shows that 72 per cent of Atlantic

Canadians are in favour of tax-included pricing. What they were asked was this: Assuming that there will be this tax, do you think it should be included in the price or shown separately? Try asking this lady who works four and one-half hours a day at Tim Horton's the real question: Do you want the tax at all? She will give you a very different answer, I can assure you, and so will the vast majority of her fellow Atlantic Canadians.

This witness was certainly not unique. The committee heard from many others in Atlantic Canada who expressed the same concerns. In St. John's we heard a joint presentation by the Coalition for Equality, the Group Against Poverty, and the National Anti-poverty Organization. This is what they told us:

Now Newfoundlanders are facing a new consumption tax which will hurt low income people — but our Finance Minister claims, "The vast majority of families in all income categories will pay less tax." This is true only if you have discretionary income to spend, unlike people who live on low fixed incomes such as pensioners, people forced to take social assistance, and people with low paying jobs or employment insurance.

These people are all going to be hurt by the harmonized sales tax because we don't buy many items that will have reduced taxes... The new 8% tax on heating fuels, electricity, purchased transport, gasoline, and children's clothing is a huge price for people who live on low fixed incomes to pay. It is extremely unfair to implement this tax that will push the poorest people in our province into deeper poverty.

The Newfoundland and Labrador representatives of the Canadian Federation of Students told us they are very concerned about higher costs for heating, electricity, books and other essentials. They are especially worried about the effects of the HST on students with small children. They also fear that this will mean another increase in tuition fees. Operating costs for Memorial University are expected to increase by \$750,000 a year. That is three-quarters of a million dollars a year that Memorial University will have to spend as a result of this HST, and the university will have to find that money somewhere, and I do not have to tell you where. The same will be true for other educational institutions in Atlantic Canada.

• (1540)

Many students are tenants, and they worry that their rents will go up because of the HST. That is a concern of many low-income people. They have good reason for their concern. In Halifax, we heard from the Investment Property Owners of Nova Scotia who told us that they will be forced to cut back on maintenance and increase rents. They said:

Tenants will suffer from a decrease in quality of their rental accommodations for the same rent they paid before the harmonized tax. Whatever the amount, the cost of rental accommodation will increase to tenants. In some cases, however, the individuals can't afford any cost increases; therefore these individuals are forced to move to cheaper rental accommodation.

What about those low-income people who own their own homes? More and more of these seniors are doing that. Will they get a break here? Apparently not. The HST will also result in significant cost increases for municipalities, which will have to be passed on. For example, the town of Windsor, Nova Scotia, told the committee:

The result of this is that all municipalities will be paying millions of dollars in additional taxes to the province. This will result in higher increases in property tax just to maintain the same level of service as last year.

Honourable senators, most senior citizens live on fixed incomes. They are very frightened about the effect the HST will have on their purchasing power. Listen to the voice of this Nova Scotia division of Canadian pensioners. This is what they said:

More than 50 per cent of the seniors population have gross incomes of less than \$24,000 per year per household.... Among the major concerns voiced by seniors has been the effect this tax will have on essentials such as fuel, power and transportation.... Seniors have also expressed concern regarding the effects the HST may have on their cost of accommodation... They are concerned about increased postal rates, the costs of clothing and footwear under \$94, funeral expenses,... the provision of home care services.... Even services such as tax preparation and the preparation of wills will cost more with the addition of the HST.

Honourable senators, in the face of all these very serious worries, concerns and fears that we heard from low-income people in Atlantic Canada, we have repeated assurances from federal and provincial ministers of finance. They say "Don't worry." They say, "The extra tax on some items will be offset by lower taxes on others." They say, "There will be compensation for the poor." In Newfoundland and Labrador, our Minister of Finance, Paul Dicks, has said that there will be an announcement in the provincial budget of "some relief" — and I use his phrase, "some relief" — from the harmonized sales tax for people with low incomes. We do not know that yet. We have not got it in writing.

When the committee was in Halifax, the opposition leader, John Hamm, told us that the province is establishing an \$8-million assistance program for the poor. He also told us, however, that according to the province's own reports, the HST

will mean that Nova Scotians will pay \$84 million more in sales tax. That \$8-million assistance package is a drop in the bucket. Mr. Hamm offered us this conclusion:

The bottom line is lower and middle income Nova Scotians who have little or no discretionary income will be gouged by the HST. They don't have a lot of money left over after heating their homes, gassing up the car, or clothing the kids. And they'll have a heck of a lot less after April 1 if the HST is approved by the Senate.

Consumers will pay \$84 million per year in sales tax with the HST. Yet, the provincial government says it will lose \$100 million a year in revenue with the HST. In Newfoundland and Labrador, the government says it will lose \$105 million every year with the HST. I have not seen the New Brunswick figures, but I presume they are much the same, and that is about a \$100-million loss per year. This adds up to \$305 million in lost revenue every year for the three provinces. Of course, that is why the federal government paid out \$761 million to those provinces as an incentive to convert to the GST.

However, if the provinces will lose revenues, how can consumers be paying more after April 1? It seems there is a simple answer. The Atlantic Provinces Economic Council has estimated that businesses in these three provinces will pay \$581 million less per year in sales tax as a result of the HST. They will profit handsomely. The difference between the gain by businesses and the losses by the provinces of \$305 million is \$276 million a year. That is the amount of added tax burden that the consumers of Atlantic Canada will be forced to bear by the HST. Those added taxes will fall most heavily on — guess who — the low-income people of Atlantic Canada. That, honourable senators, is why I simply cannot bring myself to support this bill.

I would like to leave you with one brief quotation. It is from a submission the committee received from Phyllis and Ellen Cotteau of Yarmouth, Nova Scotia. They said:

We are opposed to the BST being put on the necessities of life... We cannot afford it! Get real!

I believe they speak for many people in Atlantic Canada.

MOTION IN AMENDMENT

Hon. Ethel Cochrane: Honourable senators, as a result of what I heard, I would like to put forward this amendment. I move:

That Bill C-70 be not now read a third time but that it be amended, on page 365, by adding after line 40 the following:

"269.1(1) The portion of subsection 122.5(3) of the Act before paragraph (a) is replaced by the following:

(3) Where a return of income (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)) is filed under this Part for a taxation year in respect of an eligible individual resident in a non-participating province as defined in subsection 123(1) of the *Excise Tax Act* and the individual applies therefor in writing, 1/4 of the amount, in any, by which the total of

(2) The Act is amended by adding the following after subsection 122.5(3):

(3.1) Where a return of income (other than a return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(e) or subsection 150(4)) is filed under this Part for a taxation year in respect of an eligible individual resident in a participating province as defined in subsection 123(1) of the *Excise Tax Act* and the individual applies therefor in writing, 1/4 of the amount, in any, by which the total of

(a) \$407,

(b) \$407 for a person who is the qualified relation of the individual for the year,

(c) \$407, where the individual has no qualified relation for the year and is entitled to deduct an amount for the year under subsection 118(1) by reason of paragraph (b) thereof in respect of a qualified dependent of the individual for the year,

(d) the product obtained when \$214 is multiplied by the number of qualified dependants of the individual for the year, other than a qualified dependant in respect of whom an amount is included by reason of paragraph (c) in computing an amount deemed to be paid under this subsection for the year, and

(e) where the individual has no qualified relation for the year, the lesser of

(i) \$214, and

(ii) 4.3% of the amount, if any, by which

(A) the individual's income for the year

exceeds

(B) the amount determined for the year for the purposes of paragraph 118(1)(c),

exceeds

(f) 5% of the amount, if any, by which

(i) the individual's adjusted income for the year exceeds

(ii) \$25,921,

shall be deemed to be an amount paid by the individual on account of the individual's tax payable under this Part for the year during each of the months specified for that year under this subsection (4).”.

• (1550)

The Hon. the Speaker: It is moved by the Honourable Senator Cochrane, seconded by the Honourable Senator Simard, that Bill C-70 be not now read a third time but that it be amended on page —

An Hon Senator: Dispense.

Hon. Donald H. Oliver: Honourable senators, on a point of order, I should like to revert to the amending motion I moved in relation to books. I should have read in one more motion in amendment which is as follows:

That Bill C-70 be not now read a third time but that it be amended, on pages 95 to 98, by deleting clause 69.1.

That is part of the amendment related to books.

The Hon. the Speaker: If it is part of the amendment, then it need not be moved again. We will accept it as part of the amendment. Is it agreed honourable senators?

Hon. Senators: Agreed.

Hon. Brenda M. Robertson: Honourable senators, during the debate on second reading of Bill C-70, I said that I was optimistic that I could speak more positively about the provisions of this bill on third reading. I was counting then on my certainty that, once the members of the Standing Senate Committee on Banking, Trade and Commerce had the opportunity to listen to those Atlantic Canadians most directly affected by this bill, those honourable senators would hear the same fears and concerns that I had been hearing personally in New Brunswick for many months.

The witnesses who appeared before the committee did a great job of describing the reality of the impact of the HST on businesses and individuals in Atlantic Canada. It is directly because so many groups and individuals took responsibility for explaining in detail the real effects of the HST that I believe the committee is recommending improvements to the bill.

The committee's recommendation that there be improvements to the bill is a victory for those witnesses and supporters who worked so hard to help honourable senators understand the serious implications of a fairly complex piece of legislation. By their appearances before the committee, they also helped other New Brunswickers, Nova Scotians and Newfoundlanders to understand the implications of it as well.

It is also a victory for the "system." A pharmacist from Moncton called my office this morning and said, in relation to the deferral of the tax-in pricing provisions, "This is proof that the system really works, Brenda, and that the Senate does have an important function."

I am very happy for all Atlantic Canadian consumers and businesses who would have been harmed by the tax-in pricing provisions of the HST. Should the committee's recommendation be passed, these discriminatory and confusing provisions will effectively have been removed from the bill, which is very good news. However, honourable senators, I have other concerns about the HST, particularly its harmful impact on lower-income individuals and families.

It is clear that the HST will hurt the most vulnerable people in the Atlantic region — those on social assistance, unemployed people, seasonal workers, those who must rely on employment insurance for part of the year, those working at or near the minimum wage level, senior citizens, and those with disabilities who are living on pensions and fixed incomes. All of us in this chamber from Atlantic Canada know we have a lot of those people.

In fact, this reality was acknowledged by various studies which demonstrated that low-income groups would be negatively affected by the HST because the tax would increase the price of basic necessities, including electricity, heating fuel, clothing and footwear under \$100, bus rides, diapers, used cars sold privately, and so on.

The same research, by the same government sources, revealed that upper-income households in the region could expect to save as much as 25 times more — and maybe that is why Senator Stewart is smiling — than the lower-income people in some categories of expenditures where the combined HST will be less than the tax paid before.

Honourable senators, the impact of the HST on New Brunswick is best understood when one takes into consideration the reality of its social and economic conditions. In New Brunswick, with a population of just 762,000 at last count, more than 70,000 people are on social assistance; more than 46,000 people are on employment insurance; approximately 100,000 people file an EI claim per year; and 33,000 children live in poverty. As well, almost 96,000 senior citizens live in

New Brunswick, most of whom are dependent on small pensions, generally the OAS-GIS.

Although it is difficult to obtain statistics on "the working poor," a two-year-old study revealed that of those New Brunswickers who held one job during the year, 6.9 per cent were working at the minimum wage which, at the time, was between \$4.50 and \$4.75 an hour. As well, more than 14 per cent of the population was working for \$6 an hour.

Honourable senators, for the past three years, the average weekly earnings in New Brunswick were up by only \$4.08 while weekly earnings in Canada were up by \$26.62. High unemployment, a large number of people on social assistance and EI, far too many people working for low wages, and a dismal growth in weekly earnings is the reality in New Brunswick.

New Brunswick's Minister of Finance has conceded that as many as 20 per cent of New Brunswickers could be impacted negatively by the HST. Honourable senators, about 20 per cent, as the minister casually said, means that approximately 160,000 of our people will be negatively impacted by the HST. Put another way, the minister is saying that poor families and individuals will lose out under harmonization.

Of course, our unemployment rate is not as bad as some rates in parts of Atlantic Canada, so the impact will be more serious in those areas. It is very troubling to me, and it should be troubling to every senator in this chamber — especially those senators from New Brunswick, Nova Scotia and Newfoundland. The people in our three provinces will know how you voted on these serious issues. These people will also know who, in the other place, voted to hurt them further.

David Amirault of the Atlantic Provinces Economic Council — some of you from Atlantic Canada know David — is particularly scathing on the impact of the HST on low-income families. He said:

Breaking down the HST's impact clearly shows the new tax's "gouging" effect on low-income consumers, with many of the expected price hikes affecting basic necessities.

Bernard Valcourt, leader of the Conservative Party in New Brunswick, released a detailed analysis carried out using Statistics Canada family expenditures data, an analysis which clearly shows that families earning below \$30,000 would be affected negatively by this tax.

It is interesting to note that \$30,000 is roughly the amount used by the federal government to determine its GST rebate. All we are asking is that the federal government somehow pressure the provinces, through this amendment, to provide for a rebate on that other portion of the harmonized tax. That is what this is all about.

Premier McKenna's government response was a so-called income tax reduction and a child poverty initiative. The income tax reduction is merely the shifting of provincial taxes from personal income to a consumption tax. That measure was also adopted in Nova Scotia. That is an interesting twist of the dollar. There the government was honest enough to clearly state what they were doing. They were not quite that honest in New Brunswick. While the provincial child poverty initiative may be a step in the right direction, it is just that, a step.

• (1600)

From its inception, the federal program was intended to replace the old family allowance and to provide an income supplement to the working poor. It was never meant to be a replacement or a rebate for a tax they had to pay on basic necessities.

I would add that, while other children in Canada will have the benefit of the increase in the child tax benefit, our children will not, because it will be more than eaten up by this new tax on the necessities of life. I suppose we are once again relegating Atlantic Canadians to second class citizens.

Those who argue that the HST will not hurt New Brunswickers are placing their faith in unrealistic models and assumptions. One model includes a figure of \$600 as a cost to heat a typical New Brunswick home. I am not sure where in New Brunswick they live, but experience suggests that this is a wildly inaccurate estimate. Perhaps this amount would heat the average home for less than half a year.

It is also argued that much of the benefit of the HST results when business and retailers pass on the savings from input tax credits to the consumer. This assumption is seriously challenged by those who argue that, after years of marginal profits, few businesses are in a position to pass on savings.

I must take issue with the notion that the Government of New Brunswick has taken action that will offset the harmful effects of the HST on lower-income people. While the government has certain measures to improve the child tax benefit and the working income supplement, I must emphasize that these measures are a far cry from a satisfactory response to the effects the HST will have on lower-income New Brunswickers. These measures were never intended as a response to what is, essentially, an 8-per-cent tax hike on the necessities of life.

Honourable senators, I support this amendment because the measures taken in New Brunswick in response to the HST are extremely modest. The provincial Minister of Finance admits that some lower-income people — 20 per cent is mentioned casually — will fall through the cracks. When you have 160,000 people falling through the cracks, that is a significant number. They will be hurt by this tax.

Honourable senators, it is within the power of the federal government to take appropriate measures to right an injustice which will affect lower-income New Brunswickers and Atlantic Canadians. In committee, members said that this was a provincial responsibility, and outside the Senate's realm of responsibility. I would suggest that there are measures that the federal government could take. The federal government could insist that the bonus of just under \$1 billion that they are paying to the three provinces for helping them out on this legislation be rebated on the provincial share of the harmonized tax. We hear nothing but silence on this issue.

Honourable senators, our people are going to be hurt and we better do something about it. We have got to have a rebate of the provincial portion of the harmonized tax or else too many people will suffer again, and we will be responsible.

I support this amendment as I hope other honourable senators will.

Hon. Mabel M. DeWare: Honourable senators, I rise today to speak on third reading of Bill C-70. Before I do, I would like to express my appreciation of the work done by our committee at our hearings held in Ottawa and in Atlantic Canada.

As a Canadian senator and as an Atlantic Canadian member of the Atlantic caucus, I also appreciated listening to the views of Atlantic Canadians. I appreciated their efforts.

Honourable senators have already heard from Senator Cochrane, who listed the concerns of the people in Newfoundland and Labrador; and from Senator Robertson, who detailed the concerns of the people in New Brunswick. My remarks will be in somewhat different vein because I will deal with concerns which affect all Atlantic Canadians.

I should like to take a moment to express some of my observations on this and other recent parliamentary matters, both as a New Brunswicker and as an Atlantic Canadian. I hope my colleagues across the way, and certainly members of Parliament from the other place, will reflect on what it is that troubles me so.

The Senate is a place of sober second thought, a place where legislation can be given further consideration or, as some have said, where bills can stew awhile and, with a pinch of this and a little of that, their flavour might be improved upon.

It appears to me that senators are having to cook entire meals. We are receiving legislation that is of inferior quality, and Bill C-70 is no grade-A cut of beef.

Similarly, other bills have been sent to this chamber without having undergone any real legislative examination before they are sent to us. I am not sure what is the cause of this lack of attention to basic detail, but it is alarming.

Perhaps it is because the opposition in the other place do not concern themselves with the monotony of committee work and the improvement of bills. Perhaps they are too busy to do the work necessary to ensure that Canadians are not hurt by poorly drafted bills.

Had we not had an opportunity to put our arguments to Liberal senators, and had we not had a chance to hear from the people in Atlantic Canada who will be affected by passage of this bill, Liberal senators would not have seen the error of the bill as drafted.

Thankfully, with our members' deliberations in committee, Liberal senators agreed that an amendment was necessary. They agreed that the tax-included pricing would cost retailers, and that those costs would have to be passed on to consumers.

Our committee was told, when some of the retailers appeared before us — and I imagine they also appeared before the Liberal caucus — what it would cost them. They told us it would cost them a figure in the millions of dollars to do the kind of cataloguing, pricing and price changing from one part of Canada to another. Some companies, as you heard today, said that tax-in pricing would cost too much and that they would have to close their stores in Atlantic Canada.

Liberal senators now agree that TIP in Atlantic Canada would have led to a fragmentation of the Canadian market at a time when we are trying to decrease internal barriers to trade. Passage of the unamended bill would have led to the Balkanization of Atlantic Canada. We have only just built a bridge to link P.E.I. to the mainland and the government wants to cast Atlantic Canada adrift once again to fend for ourselves.

Where did such an idea originate? Was this whole idea the Prime Minister's or Sheila Copps'? Was it meant to trick Atlantic Canadians into thinking that the Liberals were keeping their promise to scrap the GST?

One would hope that the government, despite having such a free ride in the other place, would ensure that they listen carefully to the concerns expressed by their own members of caucus. Some members from Atlantic Canada must have spoken up on this matter — I cannot imagine them not doing so — before this legislation was tabled.

Canadians have had to hope that government members will speak up to ensure that legislation that is in the public interest will come out of the government machine. However, honourable senators, that has not happened.

• (1610)

As I listened to Senator Buchanan today, I was reminded of all the efforts to convince supporters of the Liberal government, including Liberal senators, that their EI regulations would hurt Atlantic Canadians. Liberal MPs from Atlantic Canada disregarded the concerns expressed by Elsie Wayne on the

EI matter, and the Liberal government tried to disregard the efforts of Senator Buchanan and the rest of the Atlantic caucus on the matter of the HST, until they realized we were right. Why does it take them so long to do the right thing? Why is it up to us to consider the inner details of legislation that would have profound effects on the economic health of all Canadians? Surely it was not envisioned that our job would be to dot the "i"s and cross the "t"s in government legislation. Surely, we in the Senate were not supposed to have to do the work of the elected members of Parliament. More and more we are called upon to defend not only the constitutional interests of Canadians, as is this chamber's traditional role, but to deal with tangible economic matters.

The Consumers' Association of Canada told us that there is a difference between what consumers say they want and what they are willing to pay for. They recommended that tax-included pricing be removed from this Liberal bill as the cost would be alarmingly high.

We in the Senate are supposed to look at things carefully. The new term "precautionary principle" is supposed to be very important here. It has fallen to us here in the Senate to ensure that the regions are not forgotten and that government does not run roughshod over the interests of Canadians.

Unamended, this bill would have done a disservice to Atlantic Canadians. Where were the Atlantic MPs, as Senator Buchanan has asked, both on this issue and on the EI system? Did the Liberal MPs from Atlantic Canada not do any homework on this bill, or are they not telling the truth? They voted for this bill on three separate occasions. They studied it in committee. They heard witnesses point out the exact problems that we are now addressing. They are afraid to speak out against the wishes of Ms Copps and the Prime Minister. Until we have more opposition MPs from Atlantic Canada, it will fall to us to do this most basic of legislative work.

I once again thank all honourable senators for their tremendous efforts to ensure that the voice of Atlantic Canadians was not disregarded and that a bill which should have been amended long ago finally received due consideration.

I am concerned that several changes to the bill were not embraced by Liberal senators. However, given their past record, I am sure they will come to their senses when we vote for the amendments, if not for Atlantic Canadians, perhaps for the political needs of their party.

[*Translation*]

Hon. Jean-Maurice Simard: Honourable senators, since I spoke last week at second reading, I will take just a few minutes to explain my position to you. Like my colleagues, I congratulate the Liberal senators on the committee, the Chair, Senator Kirby, in particular. If he would take off his Liberal hat more often, he would be a credit to his party and to the Senate, and the outcome could be improved legislation.

Two weeks ago, we received a 400-page bill making 300 amendments to four acts. After the public servants finished their work, the House of Commons deigned to accept another 100 amendments. During last week's visit to the Atlantic provinces, we discovered that people were not aware of these amendments. We heard 200 groups and individuals, and thanks to the interviews Senator Kirby gave to the print and broadcast media, people were made aware of the scope of this hateful and ill-conceived bill, which will punish the middle-income earners and the disadvantaged, even if the four amendments proposed by us today are accepted.

I am not going to repeat all of my arguments in favour of these amendments presented by my colleagues. As I said last week, if we could have found one or two Liberal senators in the Atlantic region to join forces with us in improving this bill, we would have done a good job and could have delayed past April 1, the effective date of this mongrel bill. I am not calling only on the Liberal senators from the Atlantic region, but also on the independent senators from Quebec, Ontario and the other provinces, to consider the amendments tabled today and to support the amendment moved by the committee, which eliminates this second product pricing system.

On television yesterday, Senator Kirby admitted that the Liberal senators had been backed into a corner by the Progressive Conservative senators. I would like to see Senator Kirby tell his colleague Paul Zed, the MP for Fundy—Royal, that he and his buddy are not the ones who convinced the Minister of Finance, Paul Martin, six months ago in the parliamentary restaurant. From Mr. Martin's appearance before the committee last Monday, we know that he has admitted that he was not in favour of the hidden tax for this Atlantic region.

I wish Senator Kirby would tell Paul Zed that it was thanks to the efforts of Progressive Conservative senators that Mr. Martin changed his mind and postponed the implementation of this second labelling system. We stated our reasons for objecting to the system as well as those given by retailers, wholesalers and manufacturers. We checked and it was confirmed by the federal government and the provinces that the cost of implementing this hybrid system for the benefit of the 8 per cent of Canadians living in Atlantic Canada, especially the most disadvantaged, would have been \$150 million the first year and then \$75 million annually, at least.

Liberal senators are to be commended for taking the time to consider the precarious circumstances of the people in Atlantic Canada. This has not happened often. During the past week, thanks to our efforts, the National Press Gallery woke up and saw the impact that implementing this disastrous tax would have on Atlantic Canada and the rest of the country. On behalf of my colleagues, I congratulate them for making the rest of the media aware of these facts.

[English]

Those 2 million people living in Atlantic Canada were not fooled by the strategy of the Liberal government. We were reminded in the last few days that the government wrote three cheques last June or July, totalling almost \$1 billion, to these three Liberal governments. There is nothing wrong with that. However, Canadians living in Atlantic Canada will not be fooled by this strategy. The government paid the cheques in June or July. Then they waited until two months ago to introduce in the House of Commons this complex 400-page bill, and they allowed two days' debate in the House of Commons. They refused to travel to the regions, and by doing so they refused to hear the people living in Atlantic Canada.

However, we did that. We did our work. We tried to do the best we could with a bad piece of legislation.

There is another thing on which the citizens living in Atlantic Canada will not be fooled. They have already discovered that the government broke its promise to scrap the GST — as we were told seven years ago. We still have the same GST, only they have compounded the problem. They compounded the problem for the poor and senior citizens who will have to deal with this harmonization legislation if it passes, and I hope it will be killed. Should it pass, Canadians living in Atlantic Canada, especially the poor, will not be fooled, because they will have to manage, with greater difficulty, their personal budgets. They will remember that at election time.

Speaking of elections, I stopped making predictions on results 25 years ago. However, I will make a prediction today. In New Brunswick — I do not know about Nova Scotia — at least four and possibly five sitting Liberal members will pay for this bad legislation with their seats. It comes after a bad EI bill and bad gun control legislation. They will pay with their seats, come June 9 — or July or even as late as September. If they wait until September, we will have the summer to campaign. Mark my words. We will remind Liberals, Conservatives and other citizens that this government has double-crossed them on the EI legislation, has double-crossed them on gun control legislation, and imposed a disguised GST then compounded the problem with this bill which is now before us.

Speaking of EI legislation, where is the so-called reform? I want to remind honourable senators today that this Senate, on three occasions, refused the requests of some senators to travel to Atlantic Canada, New Brunswick in particular, to hear citizens on that issue. We all know that a month ago Liberal MPs, Paul Zed included, discovered they had made a mistake. They should have accepted the resolution to hear the citizens of New Brunswick.

Senator Kinsella: Who is Paul Zed?

Senator Simard: He will be the former Liberal MP from Fundy—Royal.

[*Translation*]

Honourable senators, I will finish my speech right now. I will have a chance to get back to this next week or later. I would like to appeal one last time to senators who will vote tomorrow, not only Liberal senators but Conservatives and independents, from the Atlantic, from Toronto and from Western Canada, to vote against this bill. We must realize that this is a bad bill, even in its amended state.

I could support this bill if the senators on the majority side indicated their support for these three amendments.

The Hon. the Speaker: Honourable senators, I am sorry to interrupt but the sound system is not working.

Senator Simard: Honourable senators, if the Senate in its wisdom could accept these three amendments — the first one on the pricing system, the one on physicians and the one urging the federal government and the provinces to allow a rebate on the provincial tax portion, I could support the bill. Even with those amendments, the bill is poor legislation, but I would be willing to compromise.

• (1630)

I would like to call on senators not only from the Atlantic region, but from all the provinces. I invite them to consider the amendments proposed today and to not be party to this strategy I mentioned earlier, this scandalous legislative measure that will penalize the most disadvantaged in the Atlantic region.

As Jean-Marc Parent puts it in his performances, my party did it.

• (1640)

We flashed the lights in the Atlantic region. If the flashing of the lights in the Atlantic region sent a message to the other regions so that the present government will assess the damage it has done to the Atlantic region, we have accomplished something.

The three or four amendments before you today are, in my opinion, the minimum required to make this bill acceptable. If, in their wisdom, the honourable senators accept these amendments affecting doctors, the provincial rebate and sticker prices, I could support the bill. Otherwise, I will use all the powers at my disposal to convince my colleagues from Quebec, Ontario, Saskatchewan, Prince Edward Island and the other provinces to join together in killing this bad bill, even if the amendment proposed by the Senate Committee on Banking, Trade and Commerce were approved.

[*English*]

Hon. Noël A. Kinsella: Honourable senators, we seem to be concluding third reading debate on this bill, and it does not

appear that our colleagues opposite will be participating *viva voce*. It does not appear that we will have the benefit of their wisdom on the important amendments that have been moved this afternoon. Once again, Atlantic Canadians will reflect upon the level of interest shown by some honourable senators toward the concerns of the public in the provinces of New Brunswick, Newfoundland and Labrador and Nova Scotia.

However, honourable senators, we have had great leadership to take up the concerns of the public in Atlantic Canada over the past couple of weeks. We have had the leadership of Senator Buchanan who, at second reading, laid out the issues surrounding this bill very clearly.

The issues are serious ones that speak to the socio-economic, life-and-death situations of the people of New Brunswick, Nova Scotia, and Newfoundland. This is not an academic exercise. This is not a financial administration exercise. This is about people who are living on the edge for a variety of socio-economic reasons. These are people of whom Senator Cochrane spoke eloquently this afternoon; people for whom being able to pay for fuel to heat their homes in the cold of winter is a real issue. This bill would raise their fuel bill by 8 per cent.

If these people are freezing, perhaps they could buy more clothing. Currently, honourable senators, in the province of New Brunswick there is 7 per cent GST on clothing, but no provincial sales tax. This measure would raise the tax on clothing to 15 per cent.

Honourable senators opposite, like other arrogant, well-heeled people from Upper Canada and elsewhere, may be able to buy fur coats and beaver hats, but for the people along the banks of the great Miramichi and Saint John Rivers, that increase in tax from 7 per cent to 15 per cent will mean that they will go without heat in the winter, and they will shiver for lack of the extra clothing they require.

If I am wrong, honourable senators, I challenge my friends opposite to provide me with the socio-economic data and analysis that this government or its compatriots in those three provinces have adduced. What is your evidence? What does your analysis show? Did you look at the levels of poverty in the real world? I know that many of our honourable friends opposite are of the older and great tradition of the Liberal Party which had a social conscious. However, unfortunately, the reformed Liberals have been overcome by a neo-conservative, right-wing agenda.

Were there a good cabinet system in government, perhaps many silly measures such as this one would not be introduced by a minister, very often without the national caucus of the governing party having seen it in advance. I have great sympathy for my friends in the other place who sit in the government caucus. They did not know this was coming forward. These things are introduced and they are asked to be good sailors and row in the direction of the leadership.

Obviously, when the legislation gets to this place, the leader and the supporters of the government in the Senate do their best to support a government initiative, even if they do not believe in it. I cannot believe that many of my friends opposite believe in this bill. However, they will do as they have been trained to do — that is, support the government — and we will not be surprised, when the vote is taken tomorrow, to see how some of them vote.

However, honourable senators, I will make one final attempt to persuade my friends opposite to support some good amendments that speak to the socio-economic reality of our part of the country. We all know that the policy underlying this bill is politically driven. It had a great deal to do with the promise made during the last election and in the Red Book. The debate on whether or not that promise was made was reflected in the town hall meeting on the CBC.

• (1650)

The reality is that many people in Atlantic Canada thought that the promise was to get rid of the GST, and they were trying to help the federal government to do that.

Mind you, they were encouraged by the fact that they had a nice cheque being associated with their enthusiasm to help the federal government meet one of its election promises, which we were told was not one of the promises, notwithstanding the fact that the Deputy Prime Minister resigned.

It is another one of those terrible messes, and those messes inevitably unfold when a government measure is not based on good policy. This policy was politically driven and exercised with no good public policy principles to underlie it, and no good financial studies or socio-economic studies as its underpinning. Consequently, we on this side of the house attempted to do what we could to rectify a bad situation.

Once again, I want to compliment the Honourable Senator Buchanan, as well as the other senators who travelled to three provinces in Atlantic Canada. The people in New Brunswick, whom I know a little better than those in other parts of the country, appreciated that they were given an opportunity to be heard. They appreciated Senator Lynch-Staunton's request to this chamber that the committee travel to Atlantic Canada to hear the views of the people. That is particularly so, given the fact that the House of Commons committee refused to do so.

Honourable senator, I would conclude by encouraging all members to support all the amendments we will be addressing tomorrow.

Hon. John B. Stewart: I should like to ask the Honourable Senator Kinsella to confirm that his party voted for the GST. Also, am I informed correctly that his party is in favour of the harmonization of the GST and the provincial sales tax?

Senator Lynch-Staunton: Across the country.

Senator Stewart: The bill now before the Senate, as reported unanimously from the Standing Senate Committee on Banking, Trade and Commerce, recognizes the principle of harmonization across the country, and provides that tax-in prices will come into effect only when the 51 per cent of the population threshold is met.

Consequently, I ask Senator Kinsella to explain how, in view of what he has just said in condemnation of the bill as reported unanimously by the committee, his position is consistent with the declared position of the Progressive Conservative Party with regard to the GST initially and its declared position with regard to harmonization?

Senator Kinsella: I thank the Honourable Senator Stewart for his question. I will attempt to provide clarification and an explanation.

As far as the Goods and Services Tax is concerned, it is a good tax. It is an appropriate tax. Upon analysis and study of that bill when it was before us, notwithstanding the odd distraction, I voted in favour of it.

I have lived in several other countries around the world when they introduced their goods and services taxes. I lived in Italy when the Italian government introduced their VAT tax.

Given the nature of the country in which we live, which is a Confederation, and the fact that there are sales taxes in many provinces, the importance of the principle, from a public policy standpoint, of harmonization, seems to follow like night and day. That is the principle to which I subscribe today. It is the principle upon which this kind of system can be made to work effectively.

What I disagreed with, and what I continue to disagree with, is the Balkanization that may occur as a result of this measure because, obviously, it is piecemeal and it will not be effective across the country. It will cause great disharmony. It will have the effect of isolating these three provinces in particular.

That is why I was prepared to listen carefully to what the Standing Senate Committee on Banking, Trade and Commerce said about the 51 per cent rule — that you must have most of the country on side if you hope to have harmonization.

Let me express a concern I have. It is this: What was the motivation behind this amendment relating to tax-in prices? Would we have been successful in having the Standing Senate Committee on Banking, Trade and Commerce present its report with this recommendation under the leadership of Senator Buchanan? When I say "we," I mean the senators from Atlantic Canada. Was the amendment accepted because the Retail Council of Canada and the major suppliers, which are not located in our provinces, effectively said, "We will not deal in that area unless you remove this element?"

Was the public interest of New Brunswickers the first and foremost issue that has driven this bill?

Senator Robertson: There is no rebate.

Senator Kinsella: There are many other things, and that is the difficulty. I hope I have clarified the situation.

Senator Gigantès: I still do not understand.

Senator Lynch-Staunton: It is all Greek to you.

Senator Stewart: As I understood Senator Kinsella, he said he believed in harmonization, but he is against the bill as it now stands because of Balkanization. Is that correct?

Senator Kinsella: Yes.

Senator Stewart: And this is notwithstanding the unanimous report of the Standing Senate Committee on Banking, Trade and Commerce on which Senator Buchanan was a member; is that correct?

Senator Kinsella: Yes. I do not like the bill.

The Hon. the Speaker: If no other honourable senator wishes to speak, this matter will be considered debated and, by the unanimous agreement of earlier today, we will defer the vote to tomorrow at 3:30 p.m.

CRIMINAL CODE

BILL TO AMEND—REPORT OF LEGAL AND CONSTITUTIONAL
AFFAIRS COMMITTEE—MOTION IN AMENDMENT—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, seconded by the Honourable Senator Losier-Cool, for the adoption of the Sixteenth Report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill S-3, An Act to amend the Criminal Code (*plea bargaining*)), presented to the Senate on November 7, 1996.—(*Honourable Senator Kinsella*).

Hon. Anne C. Cools: I ask if the Honourable Senator Kinsella will defer to me so that I may speak on this issue.

Hon. Noël A. Kinsella: Agreed.

Senator Cools: Honourable senators, the sexual assault murders of three teenage girls, Tammy Homolka, Leslie Mahaffy and Kristen French by the husband and wife sexual psychopath couple, Karla and Paul Bernardo, of which Karla was a sister to the murdered Tammy, and the consequent Karla Homolka's plea bargain agreement, shocked Canadians from coast to coast and attracted much public repugnance. Simultaneously, the

prosecutorial and judicial management of this case resulted in much public indignation and loss of confidence in the administration of justice in Canada. The public has been shocked by the provincial and federal governments' reluctance to correct this terrible travesty of justice, and also by the fact that both the legislature of Ontario and the Parliament of Canada have been disinclined to examine this terrible affair.

• (1650)

Bill S-3 is my second initiative urging the Senate and the Parliament of Canada to examine this matter to bring this plea bargain agreement under parliamentary investigation. Senators know and remember that my first initiative, a Bill of Pain, was halted rather abruptly on November 28, 1995. However, Bill S-3 is a proposed amendment to the Criminal Code aimed at enabling courts to repudiate miscarried plea bargain agreements like the Homolka agreement and to impose a suitable penalty.

Bill S-3 passed second reading unanimously on May 2, 1996 and was referred to the Standing Senate Committee on Legal and Constitutional Affairs. I have been disappointed that the Senate committee did not call a single witness from the public. On November 7, 1996, the chairman, Senator Carstairs, reported Bill S-3 to the Senate with a one sentence report that:

...this Bill be not proceeded with further in the Senate for the following reason:

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

This is most interesting, honourable senators, because section 11(h) is not relevant to Bill S-3. Section 11(h) states:

If finally acquitted of the offence, not be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again...

Bill S-3 does not propose that any accused be punished more than once for the same crime but, rather, proposes that the accused be punished once for what the accused was not punished under the miscarried plea bargain agreement.

Like many in this country, I had expected the Senate committee to conduct an exhaustive study on the issue of plea bargaining, particularly in light of expressed public wishes. In 1995, more than 320,000 people signed petitions to the legislature of Ontario and approximately 12,000 signed petitions to the Senate seeking inquiry of this matter. The notoriously public crimes in Karla Homolka's plea bargain agreements deserved the investigative action of the Senate committee. I refer you to my two second reading speeches on Bill S-3 of March 19 and May 2, 1996, and my statements before the Senate committee on September 26, 1996. I shall not repeat myself. I shall move on to new ground.

Honourable senators, the issue is plea bargaining and prosecutorial discretion in the formation of plea bargain agreements with criminal offenders, in particular, the actions of Crown prosecutors, the responsibility of ministers for plea bargain agreements and the responsible ministers' duty to Parliament, to the public and to justice itself for the same. In Canada, all Crown prosecutors and justices operate under our system of parliamentary governance — that is, ministerial and responsible government. All Crown prosecutors of the Department of the Attorney General and all judges of the superior courts are bound by the law and the Constitution, and by the constitutional conventions and usages of ministerial responsibility to Parliaments. No one is exempt, and deviation will quickly set a minister, the Attorney General, his Crown prosecutors and any judge in violation of the law and the Constitution. The issue is the discretion of the Crown prosecutor in making plea bargain agreements with criminal offenders and the nature and extent of the Crown prosecutor's discretion. In the Homolka plea bargain agreements, the Crown prosecutor, Mr. Murray Segal; his superior, Assistant Deputy Attorney General, Mr. Michael Code; and Mr. Code's superior, Deputy Attorney General Mr. George Thomson, all of Ontario, have founded their actions and their justification for same on the prosecutorial discretion.

In his Reasons on Sentencing, Mr. Justice Francis J. Kovacs of the Ontario Court General Division, in granting judicial assent and force of law to their actions in Homolka's trial on July 6, 1993 for two charges of manslaughter, also relied upon and cited prosecutorial discretion. Finally, former Mr. Justice Patrick Galligan, in his review of their actions — ordered by Ontario's newly elected Conservative government's Attorney General, Charles Harnick — reported in "The Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka" dated March 15, 1996, also relied upon the prosecutorial discretion of the Crown prosecutor. This prosecutorial discretion is in fact ministerial discretion — that is, the Attorney General's discretionary powers under the Royal Prerogative. In short, this exercise of powers is derived not from statute but from the Royal Prerogative. Of the Ontario Attorney General agents who relied upon Crown prosecutorial discretion, none — not one — have addressed the equally pressing dimension of a discretion, which, simply put, is the legal and constitutional limits to that discretion.

On October 24, 1996, at the Standing Senate Committee on Legal and Constitutional Affairs considering Bill S-3, I put this very question to Department of Justice official Yvan Roy, General Counsel, Criminal Law Policy Section, Criminal and Social Policy Sector. I asked him: "Could you tell us the legal and constitutional limits to that discretion?"

I had hoped that this question, which Mr. Roy and every agent have disregarded, would have been well reviewed by the Senate committee. My hope found no favour. I submit that the exercise

of this discretion by department officials in criminal justice today is compelling legislative and parliamentary study. Mr. Roy answered:

This exercise of that discretion must be supervised by the courts. The court was quite adamant that the courts have the last say...

His misunderstanding is a compelling problem. The supervision of ministerial discretion derived from the Royal Prerogative is the issue of ministerial responsibility to Parliament. This supervision belongs to the electorate through their representative institutions in Parliament. Such supervision is the business of politics and Parliaments, not the courts.

Honourable senators, prosecutorial discretion by Crown prosecutors is not absolute. It is bounded by legal and constitutional limits. Further, I believe that the above Crown prosecutors of Ontario's Attorney General exceeded those limits and acted unlawfully. I assert that the Homolka plea bargain agreements were unlawful and unjust. Her first plea bargain agreement of 1993 is as unlawful and unjust as it is base and shameful. I assert that this plea bargain agreement and its judicial assent is an audacious mischief which has brought the administration of justice into contempt and has diminished the Royal Prerogative.

I shall show that the limits of prosecutorial discretion are the limits of ministerial responsibility for the minister's exercise of the Royal Prerogative. I ask the Senate to condemn this Homolka plea bargain agreement.

Honourable senators, in 1993, under the New Democratic Party Ontario government, then Attorney General Marion Boyd charged Karla Homolka with the two manslaughter deaths, murders of Leslie Mahaffy and Kristen French. Homolka was convicted of these two manslaughter charges and sentenced to 12 years on each charge concurrently. The Attorney General did not charge her with the murder of her sister Tammy, though at trial Homolka admitted criminal culpability for it. The Crown prosecutors and Mr. Justice Kovacs employed a peculiar device to forgive Karla Homolka for Tammy's murder. It is on this that I build my assertion that the Homolka plea bargain agreement is an unlawful act. This device was the Crown Prosecutor's act, on July 6, 1993, of reading into Karla Homolka's trial record on the two manslaughter charges, the details and facts of Tammy's murder — the third murder — including Karla Homolka's admitted culpability without the Crown prosecutor's laying a formal criminal charge for Tammy's murder. That is extraordinary. In short, they dispensed with the laying of a criminal charge. A consequence of such reading into the record without the laying of a criminal charge is that Karla Homolka would never be charged with Tammy's murder — that is, immunity from criminal prosecution. In short, it was an absolute forgiveness, achieved not only prior to the conviction but also without a formal criminal charge ever having been laid.

Honourable senators, I assert that this technique of the Crown prosecutors, assented to by Mr. Justice Kovacs, is not an exercise of prosecutorial discretion but is, instead, the exercise of a pardon. I assert that the act of forgiving a murder, a culpable homicide, is an act of the Royal Prerogative, the royal mercy and the royal pardon, and, in Canada, such forgiveness and pardoning powers are not within the prosecutorial discretion or powers of a provincial Attorney General or his Crown prosecutors, nor within the judicial powers of a justice of a superior court. In Canada's constitutional usage, practice and history, the exercise of royal pardon for a culpable homicide is the Sovereign's, the Governor General's acting upon the advice of the full cabinet, and is totally beyond the ken of the Attorney General of Ontario.

• (1710)

Honourable senators, the most reliable and frequently cited definition of pardon is found in Sir Edward Coke's ancient 1644 work entitled *Institutes of the Laws of England, Third Part*. The 1817 Nineteenth Edition says:

A pardon is a work of mercy, whereby the King either before attainder, sentence, or conviction, or after forgiveth any crime, offence, punishment, execution, right, title, debt or duty...

I repeat, "forgiveth."

In Canada, these pardon powers are found in the 1947 Letters Patent constituting the Office of Governor General of Canada, Article XII, which instruction articulates the settled opinion since 1878 on the constitutional pardoning powers of the Sovereign in Canada and states:

And We do further authorize and empower Our Governor General, as he shall see occasion, in Our name and on Our behalf, when any crime or offence against the laws of Canada has been committed for which the offender may be tried thereunder, to grant a pardon to any accomplice, in such crime or offence, who shall give such information as shall lead to the conviction of the principal offender ... and further to grant to any offender convicted of any such crime or offence in any court, or before any Judge, Justice, or Magistrate, administering the laws of Canada, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to Our Governor General may see fit, and to remit any fines, penalties, or forfeitures which may become due and payable to Us.

Pardons are generally granted after the conviction of the offender as formally criminally charged by the Attorney General, but the Sovereign has the power to grant pardon before

conviction. In his 1964 book entitled *Essays in Constitutional Law*, Second Edition, Robert F.V. Heuston, a United Kingdom constitutionalist, confirmed this, saying:

It is, however, important to note that the monarch may pardon any offence against the criminal law, whether before or after conviction.

In current constitutional practice in the use of pardon, the Sovereign-in-Council in the United Kingdom and Canada have declined in the last 100 years to grant pardons or mercy prior to a conviction of an offender, particularly those offenders who have turned Crown witness to give Crown evidence. It used to be quite a rampant practice, but not any more.

In fact, Canada, the United Kingdom and most commonwealth countries have constitutionally imposed pre-conviction limitations on pardon basically to allow the courts to do their work and perform their function without executive intervention. About this, Professor John L. Edwards wrote in his landmark 1980 study, entitled *Ministerial Responsibility for National Security*, at footnote number 177 noting a document in his possession that:

Home Office historical note on the subject of "Pardons before conviction," kindly forwarded to this author. The same document states: "When in 1947 counsel prosecuting in a criminal case inquired as to the possibility of using the prerogative in that way he was informed, after consultation with the Director of Public Prosecutions, that it was no longer the practice to grant free pardons for this purpose."

The Hon. the Speaker: I hesitate to interrupt the honourable senator, but her 15 minutes has expired.

Senator Cools: May I have permission to continue, honourable senators?

The Hon. the Speaker: Is leave granted?

Hon. Philippe Deane Gigantès: Honourable senators, before I grant leave, I should like to repeat my concern of the other day about this 15-minute rule which senators opposite introduced, and which is a very good rule. There is no speech that cannot be improved by being compressed to 15 minutes.

Senator Berntson: I remember 1990.

Senator Gigantès: That was filibustering; it was not a speech. It was something to make you people angry, and I think I succeeded.

If we want to have proper debate, there is no speech which could not be improved by being compressed to 15 minutes. It could be further improved if compressed to five minutes.

Senator Cools: This is a speech, honourable senators.

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

Hon. Senators: Agreed.

Senator Cools: The reasons for this pre-conviction limitation are explained by Stanley A. de Smith, Cambridge University Law Professor, in his 1971 book entitled *Constitutional and Administrative Law*. He stated:

It would seem that a pardon may be granted *before* conviction; but this power is never exercised. The line between pardon before conviction and the unlawful exercise of dispensing power is thin.

The Crown's use of the dispensing power, the suspending power and the Royal Prerogative have bedevilled parliaments for years.

Finally, honourable senators, the pardon that I believe was granted to Karla Homolka by the Crown prosecutors of the Ontario Attorney General and Mr. Justice Kovacs, was a pardon for no minor offence, but a major offence, the death and murder of a human being, a child really, a culpable homicide. Culpable homicide was termed until recently as a capital offence. In Canada's constitutional usage, such pardon, such forgiveness, is within the exclusive jurisdiction of the federal powers and the Governor General in Council. The 1947 Letters Patent constituting the Office of the Governor General, Article XII instructs ministerial responsibility of the full cabinet on pardons for culpable homicide and states:

And We do hereby direct and enjoin that Our Governor General shall not pardon or reprieve any such offender without first receiving in capital cases the advice of Our Privy Council for Canada and, in other cases, the advice of one, at least, of his Ministers.

This constitutional practice in Canada was a departure from the United Kingdom practice and was a unique and peculiar Canadian constitutional development. Pardon for culpable homicide was thought to be too heavy a burden to be carried by an individual minister of the Crown in Canada when the Colonial Secretary in the United Kingdom still held significant powers, because it was always related to the publicly controversial issue of capital punishment, and still is. The Constitution of Canada instructs that the Governor General may forgive an offender for taking a human life only on the advice of the full cabinet, including the Prime Minister. Such absolute forgiveness, as granted by those honourable gentlemen, was not theirs to offer or plea bargain with, exceeded their lawful authority and the legal and constitutional limits of their discretionary powers, and is, in fact, an abuse of the Royal Prerogative and contrary to Canada's constitutional usage and practice.

My assertion regarding the full cabinet at Ottawa's involvement in the forgiveness of capital offences is confirmed by the wording of the Criminal Code, sections 749 and 751, on the prerogative of mercy. Section 749 reads:

(1) Her Majesty may extend the royal mercy to a person who is sentenced to imprisonment under the authority of an Act of Parliament, even if the person is imprisoned for failure to pay money to another person.

(2) The Governor in Council may grant a free pardon or a conditional pardon to any person who has been convicted of an offence.

The more relevant section to my argument is section 751 entitled Royal Prerogative which reads:

Nothing in this Act in any manner limits or affects Her Majesty's royal prerogative of mercy.

Honourable Senators, the Homolka plea bargain agreements are still before the public. Paul Bernardo's former lawyers, Mr. Ken Murray and Miss Carolyn MacDonald, have been charged criminally with obstructing justice, possessing child pornography and making obscene material. Mr. Murray, in 1993, kept evidence in his possession, the horrific videotapes of the sexual assaults. These lawyers' questionable actions, their vulnerability in the courts, before some who themselves may even have been involved as authors of those Homolka plea bargain agreements, may now provide ample and further justification and opportunity for some to exonerate their very own actions. The potential for the public sacrificing of these two lawyers as having caused everything that went wrong in the Homolka case is great. I urge the Senate and all Canadians to be vigilant about the prosecution of these two persons.

Honourable senators, the protective shields and interests that have encrusted around this plea bargain agreement and its authors are publicly obvious. There is concern that the superintendent of the formulation of this Homolka plea bargain agreement, Mr. George Thomson, then Ontario's Deputy Attorney General, is now the Deputy Minister of Justice of Canada and the superintendent of the advice of the Senate committee on Bill S-3.

Further, the committee never shared its research materials with me, nor did its steering committee meet with me as the bill's sponsor to discuss the bill's progress or witnesses. This concerns senators' rights and privileges as members of Parliament granted by the Constitution Act, 1867, section 18, to advance legislation. However, that is an issue for another day.

In conclusion, Parliaments in recent times have declined to hold ministers, particularly Attorneys General, responsible to Parliament for the exercise of their discretionary powers derived from the Royal Prerogative. Consequently, large numbers of bureaucrats and officials are operating under their own steam, without parliamentary supervision. Furthermore, their appetite

for such operation grows and keeps on growing. When bureaucrats like Mr. Roy, and others such as Crown prosecutors, cite Royal Prerogative rather than statute for extending immunity from criminal prosecution to offenders, particularly for capital offences of culpable homicide, the public expects its representative institution, Parliament, to inform the responsible ministers that their activities are echoes of the Stuart kings' dispensing powers, which powers were wholly condemned and resolved in the Bill of Rights of 1688, and further urges Parliament to take action.

Honourable senators, the entire country knows that the Homolka plea bargain agreements offended the law, the Constitution and justice, and devalued — I repeat, devalued — human life and humanity.

The use of the Sovereign's Royal Acts of Grace and Mercy are intended to correct injustice and to correct miscarriage of justice. In the Homolka plea bargain agreement, the use of the Royal Prerogative powers by the Crown prosecutors is itself the miscarriage of justice.

Honourable senators, to the extent that what we have now before us is an indeterminate situation, where the report from the committee says one thing and I say another, I propose that the only way to make a determination on this basically is to return the bill to the committee for further study.

MOTION IN AMENDMENT

Hon. Anne C. Cools: Therefore, honourable senators, I move, seconded by Senator Robertson, that the report of the committee not be adopted, but that it be referred back to the committee for further consideration.

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

Hon. Noël A. Kinsella: Honourable senators, I have a few small points I wish to raise. The motion does not carry with it any specific instructions to the Standing Senate Committee on Legal and Constitutional Affairs, which has already examined Bill S-3 once. Based upon what we have heard this afternoon, and also observations we made on the report earlier, it seems to me that a number of witnesses should be called by that committee.

Senator Cools, if I heard correctly, made reference to a number of individuals who seem to have played a key part in that particular unfortunate affair. Obviously, we are more interested in the larger question, and the bill deals with the larger question. One would think that individuals such as George Thomson, the Deputy Minister of Justice, and perhaps the Crown Attorney in the city of Scarborough, among others, who have had some knowledge of this case, should be invited by the committee.

I support the motion.

Hon. Philippe Deane Gigantès: Honourable senators, I hereby declare, and I will not change my mind, I shall never again give permission for unanimous consent to extend the 15-minute limit.

Senator Lynch-Staunton: Never is a long time.

On motion of Senator Corbin, debate adjourned.

THE HONOURABLE MAURICE RIEL

CAREER OF A DISTINGUISHED CANADIAN—INQUIRY

Hon. Noël A. Kinsella: Honourable senators, I think this matter has been dealt with as part of Tributes yesterday. Perhaps we could strike this item from the Order Paper.

The Hon. the Speaker: Honourable senators, is it agree that this Inquiry be considered debated?

Hon. Senators: Agreed.

HUMAN RIGHTS

VISIBLE MINORITIES AND THE PUBLIC SERVICE OF CANADA— REPORT TO HUMAN RIGHTS COMMISSION—INQUIRY— DEBATE ADJOURNED

Hon. Donald H. Oliver rose pursuant to notice of March 10, 1997:

That he will call the attention of the Senate to a report submitted to the Canadian Human Rights Commission (CHRC) by John Samuel and Associates Inc., entitled *Visible Minorities and the Public Service of Canada*.

He said: Honourable senators, I rise today to speak to the inquiry of which I gave notice a few days ago, to draw your attention to the situation that visible minorities face in finding employment and receiving promotions within the Public Service of Canada. A report entitled "Visible Minorities and the Public Service of Canada" was submitted last month to the Canadian Human Rights Commission by John Samuel and Associates. I will briefly summarize the findings of the report before describing what actions I believe the Senate might be able to take to help improve the situation.

The rate of visible minority representation in the Canadian public service is far lower than those of both the private sector and the Canadian labour force in general. It is estimated that visible minority representation in the Canadian labour force as a whole now stands at 12 per cent. Between 1987 and 1994, the visible minority group represented in the private sector rose from 5 per cent to 8.2 per cent. Last year, the five chartered banks had representation levels ranging from 10.7 per cent to 18.2 per cent. Yet, the rate of visible minority representation in the Canadian public service last year was a mere 4.1 per cent.

It was with these numbers in mind that the Canadian Human Rights Commission initiated the report. Fourteen departments and agencies were chosen for the study. They ranged in size and in success rates at hiring visible minority employees. More than 2,000 employees of these departments volunteered to participate. The study involved both qualitative and quantitative techniques. These ranged from questionnaires to focus groups and interviews. The groups that participated were visible minority employees including a group of former public servants, a control group of non-visible minority public servants, public servants with staffing-managing responsibilities and executives known as EX, primarily assistant deputy ministers and directors general.

Twelve private sector firms also received a questionnaire. Eight high-ranking human resource officials of the private sector were interviewed, along with the former president of the Canadian Bankers Association.

Both visible minority employees and public service managers felt that racial discrimination against visible minorities is prevalent in the Public Service of Canada. The comments of the participants emphasized the need for both flexibility and accountability.

• (1730)

Participants stated that hiring practices and procedures, restrictions on external recruitment, for example, are not flexible enough to provide increased employment opportunities for visible minorities. However, some participants believe that visible minorities were adversely affected when managers used their discretion, for example, in the case of acting appointments. The report concludes that an increase in flexibility may only be effective if managers are held accountable for the successful implementation of employment equity goals. These goals, the report states, should be factored into all aspects of the staffing process.

For those senators interested in the detailed findings of the report, it is available at the Human Rights Commission.

Honourable senators, I believe that the present situation is unacceptable. First, the matter of minority representation in the public service is a basic question of human rights. Second, the employer in question is the Government of Canada. As Canadians, we like to think of our society as tolerant and open, but how can the federal government insist that society be open when its own hiring practices seem not to be or are at least suspect?

Canada has often taken a leading role in the international community in the area of human rights. A prime example of such leadership is the stance that Prime Minister Brian Mulroney took against South African apartheid. The inequity of our public service affects not only individual Canadians but our effectiveness to deal with the question of human rights around the world.

In the last few years, the federal government and its provincial counterparts have taken up the challenge of fighting the deficit.

Witness this unified stand as the Canadian people have developed the will to support such a struggle. Yet, as important as Canada's financial deficit may be, our deficit of equal opportunity is much more so.

This nation of different linguistic, religious and ethnic backgrounds has defined itself as an open society. We have distinguished ourselves within the community of nations as holding firm to the values of equality and tolerance. It is with the goal of such nation building that we take up the struggle against the financial deficit. Our finances are but a means of providing that the society that we believe in is the most just in the world.

Over the last two decades, we have kept this vision in mind. Numerous studies both by the Public Service Commission and women's groups were done on female representation within the public service. The will to overturn the obstacles facing women in the public service has allowed for their representation rate to be greatly increased within the last 20 years. Such measures have legitimized the government's voice in demanding that the private sector also become more inclusive of women.

Honourable senators, I believe the time has come to take similar aggressive measures to increase visible minority representation within the public service. Without first cleaning up our own house, I find it difficult to see how we can encourage the private sector to increase their own levels of visible minority representation in management.

As Dr. John Samuel's report suggests, what is needed are not quotas but goals, sensitivity training and cross-cultural understanding. Too often managers look for elements of themselves within prospective employees, and confuse cultural differences for character deficiencies. With clear criteria for hiring and promotions, as well as rewards for positive results, the representation of visible minority groups can easily surpass levels found in the private sectors. I do recognize, however, that even the thousand-step journey begins with but a single step.

To my honourable colleagues, I suggest the two following options: A special committee may be struck to examine hiring practices within the Senate itself. How does our visible minority representation rate compare with the rates of the public service as a whole, the private sector and the general labour force? Does the criticism outlined in Dr. Samuel's report apply to our own staffing practices? What changes need to be made? What goals and rewards should be established?

In addition, or alternatively, a special joint parliamentary committee could be struck to examine the public service as a whole, with the purpose of initiating change. Once again, it will be necessary to examine the alleged rigidity of staffing practices and biases of evaluators.

Of these two endeavours, honourable senators, attempting the first before the second seems to be the most reasonable course of action. Not only is the group being studied smaller, but honourable senators will most likely have more control over the Senate committee than they commonly do over a joint committee. As well, having first studied the Senate and

suggested improvements, senators will most likely find work on a joint committee to be less daunting and more familiar. Finally, having some prior experience in studying such matters, honourable senators will be important resources in any joint committee studies.

In a search for steps that Canada could take to more fully investigate this issue, I found a report on visible minorities in the Public Service of Canada to be instructive. It was prepared by the House of Commons in 1984. The committee that conducted the study was a mix of Liberals, New Democrats and Conservatives. The report is divided into six chapters, including social integration, employment, public policy, legal and justice issues, media and education.

On page 59, the report spoke of conducting an evaluation of employment and development programs. There was reference to the National Industrial Program and several employment development programs such as Leap, Summer Canada, and Canada Community Development Projects, all of which are designed to help train visible minorities for subsequent positions in the public service.

A special committee of the Senate or a joint committee of the Senate and the House of Commons would do well to review equality now, and update our findings for the next millennium.

Living in a nation of immigrants, most Canadians now understand that there are no "real Canadians." With the changing face of the population, it requires a particularly stubborn kind of bigotry to keep asserting otherwise.

In a previous study, John Samuel indicated that Canada's visible minority rate will have increased over 350 per cent between the years 1986 and 2001. Visible minority rates in the public service would now have to increase by almost 300 per cent simply to reflect the actual rates in the general work force.

Honourable senators, the problem in question is by no means insignificant. This underrepresentation is not simply a statistical anomaly. There can be no question that something has gone wrong. The discrimination that visible minorities face in the public service is the epitome of systemic racism. Whether intentional or not, the staffing practices in the public service are to the great disadvantage of visible minorities. These individuals are more than just potential employees; each is, simultaneously, a stockholder and client. As taxpayers, they provide the financial capital for the government's services. As citizens, they vote to choose Canada's party of governors. Finally, as residents, they expect and deserve a quality product and essential services they can count on. Thus, great visible minority representation in the public service is more than just a matter of human rights — it is a question of the government positioning itself to best serve its clients.

Like in private industry, increasing opportunity and access to people of colour will help the public service find new talents and ideas. As John Samuel's report suggests, the underrepresentation of visible minorities may well be explained by the monopoly that

government has over its services. With the changing nature of Canada's population, increased inclusiveness will most likely be interpreted by Canadians as a greater ability to be responsive to their needs.

The question of increasing visible minority representation is a challenge that must be met if Canadians are to remain truly united in the next millennium. The relationship between citizens and their government is unquestionably one of the most important factors in forging national identity. If the public service is unable to change at a rate similar to that of the Canadian population, the next century will prove to be one in which government is found to be too far out of step with the people, but this outcome can be avoided if the commitment to change is made now.

Honourable senators, the question of inclusiveness is not simply a matter of perceptions. Inclusiveness in the public service will have real consequences. The way government does business and the way Canadians perceive their government depends largely on the ability of the public service managers to empathize with the Canadians they serve. The solution to the problem requires a true sense of urgency and a real understanding of the issues. The Senate, charged with upholding the rights and interests of minorities, is an ideal catalyst for such change. I believe that honourable senators are well positioned for studying the matter and proposing whatever means necessary to achieve our desired end, which is equality within the public service.

Hon. Philippe Deane Gigantès: Honourable senators, I compliment Senator Oliver on his excellent speech.

On motion of Senator Gigantès, debate adjourned.

ABORIGINAL PEOPLES

FIRST NATIONS GOVERNMENT BILL—COMMITTEE AUTHORIZED TO APPLY MATERIALS AND EVIDENCE GATHERED ON SUBJECT-MATTER EXAMINATION TO STUDY OF CURRENT BILL

Hon. Landon Pearson, pursuant to notice of March 11, 1997, moved:

That the papers and evidence received and taken by the Standing Senate Committee on Aboriginal Peoples during its consideration of the subject-matter of Bill S-10, An Act providing for self-government by the First Nations of Canada, in the First Session of the Thirty-fifth Parliament, be referred to the Committee for its present study of Bill S-12, An Act providing for the self-government by the First Nations of Canada.

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

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.

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