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(HANSARD)

Thursday, December 4, 1997

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

CONTENTS

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

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THE SENATE

Thursday, December 4, 1997

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

Prayers.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to recognize some visitors in our gallery. We have with us a group of 40 Canada World Youth participants. Half of them are from Russia and the other half are Canadians from all regions of our country. The members of this group have lived and worked for the past three months in Russia, and they are doing the same now for another period of three months in Ontario.

We welcome them to the Senate.

Hon. Senators: Hear, hear!

The Hon. the Speaker: Honourable senators, I should like to take one more moment of your time to read from a letter which one of them, Alexei Liatun from Russia, gave to me at noon.

He writes:

> I just wish to say a few words about this grandiose project, I mean our exchange program. It helps to develop people in different points. I want to turn your attention to the educational aspects of this program.
>
> At first we are getting new skills such as communication with different people, adaptation in unusual and extremely fast changing situations. We are also learning to be patient towards different points of view.
>
> At second we are realizing our experiences and sharing them with each other, what helps us to understand ourselves and the world around us.

The letter continues, and then he closes by saying:

> Now we are learning, but soon we'll be acting, because the future is in our hands.

That is what we hope for our young people.

SENATORS' STATEMENTS

NATIONAL DAY OF REMEMBRANCE

EIGHTH ANNIVERSARY OF TRAGEDY AT L'ÉCOLE POLYTECHNIQUE

Hon. Joyce Fairbairn: Honourable senators, on Saturday, groups of men and women will gather across this country in sadness, a reminder to us that we live in a society in which violence against women is a regular occurrence. We did not choose December 6 as the day to focus on this issue. It was chosen for us eight years ago, when a deeply disturbed individual with a semi-automatic weapon broke into a classroom at L'École polytechnique in Montreal. He separated out the men and, proclaiming his hatred of feminists, gunned down 14 young women before killing himself.

We will never forget the names of those who lost, in an instant, their hopes, their dreams and their future: Geneviève Bergeron, Hélène Colgan, Natalie Croteau, Barbara Daigneault, Anne-Marie Edward, Maud Haviernick, Barbara Marie Klueznick, Maryse Laganière, Maryse Leclair, Anne-Marie Lemay, Sonia Pelletier, Michelle Richard, Annie Saint-Arnault, and Annie Turcotte. They are not merely names or statistics, honourable senators. They represent our sisters, our daughters and our friends.

We also remember the families and the friends of these women who face the memories of this tragic loss every day. Our thoughts and prayers are with them, and we include in them people like Wendy Cukier and Heidi Rathjen, who together set up the Coalition for Gun Control, and always Suzanne Laplante-Edward who lost her daughter on that day.

On the anniversary of this tragedy, we must remember not only these victims but the millions of women who face violence in Canada every day. One need only pick up a newspaper to see horrific examples of women being victimized, resulting in serious health, economic and social consequences for individuals, families and our entire society.

In 1993, statistics showed us that 51 per cent of all Canadian women have experienced at least one incident of physical or sexual violence since the age of 16. In addition, it is estimated that 80 per cent of women with a disability will be sexually assaulted in their lifetime. Among aboriginal women, the rate of abuse may be as high as 80 per cent.

These statistics, honourable senators, do not tell the whole story. It is estimated that less than one-third of all incidents of violence are even reported. As well, women live every day with the threat which impacts their daily lives. Public awareness of the problem has increased, and that is good.

• (1410)

Increasing numbers of men have actively taken up the cause. However, in order to eliminate violence against women, all members of society must work together. As governments, businesses, voluntary organizations and individuals working together, we can make progress.

In recent years, the government has taken a number of concrete steps towards such progress but legislation, honourable senators, is not enough. We must speak out to change the attitudes which produce violence against women, as well as against men, children and seniors.

Together, we must attack the economic and social problems which foster the kind of fear, insecurity and ignorance that in turn breed anger, desperation and violence. We must remember, although it is a painful symbol, those 14 young women and their families not only on December 6 but every day, because they are symbols of each and every individual in Canada who is threatened, abused or forfeits their life through violence. We in this Parliament must send a strong signal and a clear message that we cannot and will not tolerate such acts against anyone in our society.

NOVA SCOTIA

EIGHTIETH ANNIVERSARY OF EXPLOSION IN HALIFAX HARBOUR

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, in Halifax, on Saturday, many will remember the eightieth anniversary of the Halifax explosion. On that day, the *Imo* and the *Mont Blanc* collided in Halifax harbour. I would like to share with you the view of a young boy on that day:

> It happened on a mild sunshine morning. The date was December 6, 1917. I was late for class that day and, as was the custom, I knelt by my desk to say the class morning prayers. As I got off my knees (I remember we were doing a Latin lesson) I said to Parker Hickey my seat mate "What page are we at?" As I did so, I glanced out the window and saw a huge ball of fire in the sky. I yelled "Look at the fire!" As the heads turned there came a terrific blast that rocked and damaged the building. The glass was smashed in every window. Our teacher had the unique habit of having his desk face the window. Flying glass cost him the eye that was not turned away from the window. Statues were knocked from their pedestals. Plaster filled the air like thick fog. Brother McCartney ordered us to link hands and to head for the corridor. As Hickey and I made for the door of the classroom, not easy to find, we heard someone blubbering behind us. Hickey, a tough little bird, not much larger than I, said, "Who's that bawling?" I said "it's Smithy." Smithy was big Erin Smith, the largest boy in the class who later became a star hockey player and oarsman... Said Hickey, "Kick him in the shins." I had steel lifts on my shoes to make them wear longer. Following Hickey's injunction all the way to the classroom door I kicked Smithy's shins. The only marks he had as a result of the explosion were gouged shins caused by my steel plates. He couldn't understand how he had received them — I didn't tell him. Hickey and I bled copiously from cuts on the head caused by the flying glass. With our faces bloodied we made the outdoors. The cuts were superficial however, and we were not really hurt.
>
> I went home that day with a boy named Dan McTiernan. He lived on Campbell Road which was an extension of Barrington Street north of North Street. We could not find his house because the neighbourhood was a mass of flames. His mother died in the fire and his poor father, a railroad engineer, scarcely drew a sober breath thereafter. He died an alcoholic. Having lost his job, this fine man became a panhandler, scorned by those who should have known better but never even wondered at the cause of his personal debacle.
>
> Seeing the widespread conflagrations it occurred to me, then for the first time, that my own home might be in danger. Our house was about a half mile from where the McTiernan home had been. When I arrived there I found my sister Margaret with a bad cut on her head, the roof of the house was ripped off and the south side pushed in. We did not know then that my father was hurt. He arrived home shortly after I did having walked all the way from downtown with a cut below the knee of his right leg which bled continuously. We were all ordered out of our homes because the authorities feared a dockyard explosion where a quantity of ammunition was stored. That did not happen, however, and we were allowed to return to our homes from the Halifax Commons where we had taken refuge.
>
> The top rooms of the house were uninhabitable so we spent the night in the basement kitchen. My father obtained some wood and boarded up the kitchen windows. The children were put to sleep on tables and my mother, father and I stayed awake. That night there was a terrible blizzard. High winds vied with a heavy snowfall to create great difficulties. The rescue crews digging the living and the dead from the north end ruins were greatly impeded in their rescue efforts. The city was bathed in a red glow from the fires. By morning, more than four feet of snow had fallen.

> ...Relief depots were set up. Public buildings were used as dormitories for the homeless. They were fed, clothed and provided with blankets by a hastily-drawn-up emergency committee. The first aid to reach us was from Massachusetts. It arrived the following night in the form of medical supplies, doctors and nurses.

Honourable senators, the story that I related to you today was my father's story. As many of you know, my father was at one time a member of this chamber. His father did not survive the effects of that explosion. He died nine months after the Halifax explosion. My grandmother died two years later, my father always said, of a broken heart. My mother always said it was because she looked at having to raise 10 children alone and died of the shock. I suspect she died of a stroke, knowing the family history. My father was left to raise his nine brothers and sisters by himself.

Hon. J. Michael Forrestall: Honourable senators, I would pay tribute to the correctness and the truth of the story we have just heard. There were countless stories, of bravery and privation, of suffering and success.

What we have heard is typical and, I may say, typical of Senator Carstairs' family. So deep are their roots in Halifax that she would remain one of the few people that I know of with credentials to speak to us of those days. I appreciated the honourable senator's remarks.

Hon. John Buchanan: Honourable senators, at the time, the Halifax explosion was the largest explosion to have happened anywhere in the world. It reverberated from the north end of Halifax, all the way up to the south end where the deputy leader's family lived.

If you have an opportunity to go to Halifax, to the north end, there is a wonderful set of bells and chimes erected on the top of a hill. If you are in the harbour on a vessel or over in Dartmouth, you can look across and see those bells.

The Government of Nova Scotia and the federal government combined together on the seventieth anniversary to erect those bells in commemoration of the Halifax explosion. They are a wonderful sight to see. They are just opposite the area where the two vessels collided. The bells serve as a remembrance for all people in the Halifax area of the great explosion of 1917.

Senator Carstairs mentioned that the first relief train was not from any part of Canada; it came from Boston.

• (1420)

In 1971, the former premier of Nova Scotia, Gerry Regan, initiated a ceremony that continues to this day. For 13 years, I attended and assisted at the lighting of a giant Nova Scotian Christmas tree that, for the majority of those years, came from Lunenburg. The tree is a gift to the City of Boston to be installed and decorated in front of the Prudential Centre as a "Thank you" to the people of Boston for their prompt response to the plight of the people of Halifax who had been injured, and to the terrible destruction.

Should you find yourself in the Boston area around Christmas, you will see our Nova Scotian Christmas tree there. It is anywhere from 50 to 60 feet high and is decorated with 22,000 lights supplied by the Prudential Insurance Company. If you are in Halifax, please take the time to go to the north end of the city and see the bells that were installed at that time to commemorate this tragic, terrible event.

Senator Carstairs, we all listened intently to your story, as told by your father back at that time. Thank you for sharing it with us.

ROUTINE PROCEEDINGS

CANADA EVIDENCE ACT
CRIMINAL CODE
CANADIAN HUMAN RIGHTS ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Lorna Milne: Honourable senators, I have the honour to present the third report of the Standing Senate Committee on Legal and Constitutional Affairs, which deals with Bill S-5, to amend the Canada Evidence Act and the Criminal Code in respect of persons with disabilities, to amend the Canadian Human Rights Act in respect of persons with disabilities and other matters, and to make consequential amendments to other acts.

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

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

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

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

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

SIXTH REPORT OF COMMITTEE PRESENTED

Hon. Bill Rompkey: Honourable senators, I have the pleasure to present the sixth report of the Standing Senate Committee on Internal Economy, Budgets and Administration regarding various committee budgets.

Wednesday, December 3, 1997

The Standing Senate Committee on Internal Economy, Budgets and Administration has the honour to present its

SIXTH REPORT

Your committee has examined and approved the budgets presented to it by the following committees for the proposed expenditures of the said committees for the fiscal year ending March 31, 1998:

Standing Joint Committee on Scrutiny of Regulations (Senate Share):

97-12-02/052

Professional and Special Services	$ 56,760
Transportation and Communication	1,950
All Other Expenditures	3,240
TOTAL	$61,950

Standing Committee on National Finance (Legislation):

97-12-02/054

Professional and Other Services	$ 8,000
Transportation and Communication	7,500
All Other Expenditures	1,500
TOTAL	$ 17,000

Respectfully submitted,

WILLIAM ROMPKEY
Chair

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

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

[*Translation*]

INTER-PARLIAMENTARY UNION

NINETY-EIGHTH CONFERENCE, CAIRO, EGYPT—REPORT OF CANADIAN GROUP TABLED

Hon. Gérald J. Comeau: Honourable senators, I have the honour to table the report of the Canadian branch of the Inter-Parliamentary Union which represented Canada at the ninety-eighth interparliamentary conference, held in Cairo, Egypt, from September 10 to 16, 1997.

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 Monday, December 8, 1997, I will move:

That the Standing Senate Committee on Transport and Communications have power to sit at 4:00 p.m. on Tuesday December 9, 1997, for its study of Bill S-4, An Act to amend the Canada Shipping Act (maritime liability), even though the Senate may then be sitting and that rule 95(4) be suspended in relation thereto.

[*English*]

REPORTS ON SOCIAL AND ECONOMIC DEVELOPMENT

NOTICE OF INQUIRY

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, I give notice that on Tuesday, December 9, 1997, I shall call the attention of the Senate to reports on social and economic development.

[*Translation*]

INTER-PARLIAMENTARY UNION

NINETY-EIGHTH CONFERENCE, CAIRO, EGYPT—NOTICE OF INQUIRY

Hon. Gérald J. Comeau: Honourable senators, I give notice that on Tuesday, December 9, 1997, I will call the attention of the Senate to the ninety-eighth interparliamentary conference, held in Cairo, Egypt, from September 10 to 16, 1997.

[*English*]

QUESTION PERIOD

THE SENATE

DISCIPLINARY ACTION CONTEMPLATED IN RELATION TO ATTENDANCE RECORD OF SENATOR—STATUS OF DELIBERATIONS IN COMMITTEE ON INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

Hon. Colin Kenny: Honourable senators, I have a question for the Chairman of the Standing Committee on Internal Economy, Budgets and Administration. At its meeting on August 12, 1997, the committee took action in relation to Senator Thompson. At that time it undertook to reconsider his situation further in one month's time.

Would the chairman please advise us what further consideration the committee has given to this matter, and what action it intends to take in this regard?

Hon. Bill Rompkey: Honourable senators, the committee received a report from a subcommittee that had been struck, composed of members of both the Internal Economy Committee and the Rules Committee. That subcommittee has been meeting, and has submitted a report which is under active consideration at the present time.

The Internal Economy Committee wants to assure itself not only of its responsibilities but also of the legalities within which it operates and its legal grounds. At such time as the committee is in a position to do so, it will report to the Senate on its deliberations.

Senator Kenny: I have a supplementary question, honourable senators. Can the chairman of the committee assure us that we will have a report on this matter before we adjourn for Christmas?

Senator Rompkey: The committee will report to the chamber as soon as possible. I would hope that that would be in the very near future.

• (1430)

Hon. Terry Stratton: Honourable senators, I also have a question for Senator Rompkey. I think it is of particular interest to every one in this chamber that we deal with this matter as quickly as possible, that is, before we adjourn for Christmas. I do not think we want to go back into our regions without this issue resolved, in one way or another. Can the chairman assure us that every effort will be made to ensure that this happens?

Senator Rompkey: I can assure the honourable senator that I personally share his feelings. Further, I can assure him that the answer to his question is yes, every effort will be made.

DELAYED ANSWER TO ORAL QUESTION

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, I have a response to a question raised in the Senate on November 19, 1997 by the Honourable Senator David Tkachuk regarding changes to the Canada Pension Plan, circulation of income tax returns.

HUMAN RESOURCES

CHANGES TO CANADA PENSION PLAN—CIRCULATION OF INCOME TAX FORMS PRIOR TO PASSAGE OF BILL—GOVERNMENT POSITION

(Response to question raised by Hon. David Tkachuk on November 19, 1997)

The government does not intend to release either the CPP withholding tables or the 1997 personal income tax returns until the Senate has completed its consideration of Bill C-2.

ANSWERS TO ORDER PAPER QUESTIONS TABLED

ENERGY—CANADIAN MUSEUM OF NATURE—CONFORMITY WITH ALTERNATIVE FUELS ACT

Hon. Sharon Carstairs (Deputy Leader of the Government) tabled the answer to Question No. 32 on the Order Paper—by Senator Kenny.

ENERGY—NATIONAL CAPITAL COMMISSION—CONFORMITY WITH ALTERNATIVE FUELS ACT

Hon. Sharon Carstairs (Deputy Leader of the Government) tabled the answer to Question No. 36—by Senator Kenny.

DEFENCE—FUTURE OF CF-18 HORNETS

Hon. Sharon Carstairs (Deputy Leader of the Government) tabled the answer to Question No. 73—by Senator Forrestall.

FISHERIES AND OCEANS—INCREASE IN EXECUTIVE POSITIONS

Hon. Sharon Carstairs (Deputy Leader of the Government) tabled the answer to Question No. 79—by Senator Spivak.

ORDERS OF THE DAY

APPROPRIATION BILL NO. 2, 1997-98

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Chalifoux, for the second reading of Bill C-23, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 1998.

Hon. Terry Stratton: Honourable senators, I rise to speak to Bill C-23, which would grant to Her Majesty certain sums of money for the Public Service of Canada for the fiscal year ending March 31, 1998.

Supplementary Estimates (A) is the first of a set of Supplementary Estimates that will be issued in the 1997-98 fiscal year that ends on March 31. These Estimates call for a total increase of $3.48 billion which will bring the Estimate of federal expenditures for 1997-98 to approximately $153.3 billion. This represents a 2.3-per-cent increase over the original Estimate of $149.56 billion.

This bill seeks Parliament's authority to spend money which, while provided for in the fiscal plan set out in the 1997 budget, was not included in the 1997-98 Main Estimates. The amount in these Supplementary Estimates is $2.62 billion. The second purpose of these Estimates is to provide Parliament with information about changes in projections of statutory spending it has already approved in legislation. Such statutory adjustments found in the Supplementary Estimates (A) account for an $858.2-million increase from the amounts in the Main Estimates.

In its review of the Estimates, the Standing Senate Committee on National Finance was interested in the Supplementary Estimates of Transport Canada. This department is seeking to almost double its budget for operating expenditures from $111.3 million in the Main Estimates to a new level of $218.6 million in the Supplementary Estimates. The largest portion of the new appropriation is earmarked to cover revenue adjustments associated with amendments to the new lease at the Greater Toronto Airport. The committee wanted some clarification on the changes in the lease that would result in such a reduction in government revenues. It was also concerned about the short time that elapsed between the announcement of the deal and the signing of the amended lease in April 1997. The announcement of the deal was in January 1997, and the signing of the amended lease was in April 1997.

The committee met with officials from the Department of Transport this morning and are now requesting that representatives of the Greater Toronto Airport Authority appear in the near future.

The committee observed that the original 1997-98 Estimates of the Department of Agriculture and Agri-Food came in at $1.169 billion. However, in these Supplementary Estimates the department seeks an additional $442.7 million, of which $300.4 million is statutory. The largest single component of the increase in statutory items is a $98.6-million increase in payments in connection with the Farm Income Protection Act, more than double the amount originally budgeted for in this program.

The Department of Justice also attracted the attention of the committee. The department is requesting a 21.2-per-cent increase in its operating budget. Most of the $33.8-million increase will be divided between personnel expenditures of $13.9 million and professional services of $9.8 million.

The committee continued to ask for details on the way the government budgets for its large lawsuits that it is facing. In particular, the committee has been interested in following the way that the department was planning to handle the various expenses relating to the Airbus suit. Although Treasury Board officials have made an effort to answer these inquiries, the committee remains unsatisfied with the responses.

Another issue of interest to the committee is the source and control of funds set aside for supporting certain international travel by Canadian judges. This seems to involve the Canadian International Development Agency, CIDA, and the Canadian Judicial Council. Although the committee has expressed interest in this matter on repeated occasions, it has yet to receive a satisfactory answer.

As can be seen from questions raised by the committee, satisfactory answers were not given to much of what was asked. To repeat what I have already said, I refer specifically to the answers received from Treasury Board regarding the Department of Justice concerning expenses relating to Airbus and funds for international travel by Canadian judges. The obfuscation and "Yes, minister" responses only served to raise further questions by the committee, such as: Why does the Department of Justice not keep track on a case-by-case basis of the costs incurred for each case? Imagine trying to run a professional law practice with no time sheets being submitted by each partner or member of the partnership. Imagine the Senate taking foreign trips without the public's knowledge of the costs incurred and the reasons for such travel.

These are questions that have been asked repeatedly, but the answers have not been forthcoming. It would appear that an obvious course for the Finance Committee would be to examine in detail the Department of Justice regarding these questions so that satisfactory answers are forthcoming or, if not, why not.

Motion agreed to and bill read second time.

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

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

CRIMINAL CODE
INTERPRETATION ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Moore, seconded by the Honourable Senator Ferretti Barth, for the second reading of Bill C-16, to amend the Criminal Code and the Interpretation Act (powers to arrest and enter dwellings),
>
> And on the motion in amendment of the Honourable Senator Cools, seconded by the Honourable Senator Sparrow, that the motion be amended by deleting all the words after "That" and substituting the following therefor:
>
> > "Bill C-16, An Act to amend the Criminal Code and the Interpretation Act (powers to arrest and enter dwellings), be not now read a second time because
> >
> > (a) the Senate is opposed to the principle of a bill which has been placed before Parliament as a result of the judgment of the Supreme Court of Canada of May 22, 1997, and of the Court's Orders of June 27 and November 19, 1997;

(b) the Senate finds it repugnant that the Supreme Court is infringing on the sovereign rights of Parliament to enact legislation and is failing to respect the constitutional comity between the courts and Parliament; and

(c) the Court is in effect coercing Parliament by threatening chaotic consequences respecting law enforcement and arrests if Parliament does not pass this bill."

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I asked for the adjournment of this matter hoping that the government would give us its response and attitude in regard to the motion by Senator Cools, which cannot be treated lightly. We will have to vote on the motion since it has been ruled in order. We would like to have the government's reaction. If they do not have one today, perhaps we can do it another time.

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, while we respect the effort Senator Cools has put into this particular amendment, we believe that the bill is a necessary one and that it should be referred to the Standing Senate Committee on Legal and Constitutional Affairs for evaluation.

• (1440)

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, if that is all the government side has to say about the amendment before us, I will undertake to see that our side prepares a response to be given at the next sitting.

On motion of Senator Kinsella, debate adjourned.

INCOME TAX CONVENTIONS IMPLEMENTATION ACT, 1997

SECOND READING—DEBATE ADJOURNED

Hon. Jerahmiel S. Grafstein moved the second reading of Bill C-10, to implement a convention between Canada and Sweden, a convention between Canada and the Republic of Lithuania, a convention between Canada and the Republic of Kazakhstan, a convention between Canada and the Republic of Iceland and a convention between Canada and the Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and to amend the Canada-Netherlands Income Tax Convention Act, 1986 and the Canada-United States Tax Convention Act, 1984.

He said: Honourable senators will recall that in 1917 income taxes were first introduced in Canada, heralded at that time by the government of the day as merely temporary measures to deal with the one-time costs of World War I. We all know that, since that time, taxes have inexorably invaded every aspect of our lives. Unfortunately, democracy's natural tendency is to indiscriminately inflate taxes. Meanwhile, the sole and lonely taxpayers of this country are treated as creatures apart from real life: isolated, segmented, described eerily at times as separate and distinct entities, divorced from the necessities of conducting national business and establishing national priorities. Today, we find ourselves caught in a pervasive tax structure that permeates every aspect of our lives, and all business transactions large and small. Sometimes we forget that only through growth in business and the economy can we create private jobs or support public jobs.

No business today, large and small, can be created or maintained without intensive and extensive tax planning. To manage the tax costs of doing business, from the corner store to global corporations, is a daily preoccupation. More often than not, more time and attention is invested in tax planning and payments than in nourishing the core business enterprises themselves.

Yet, honourable senators, it is a fact of our democratic life, and therefore our responsibility is to remove egregious and inequitable tax consequences as best we can when we find them.

We have repeatedly said that Canada is a trading nation. We are dependent on trade. In order to foster more efficient trade and investment, we must continually renovate and modernize our tax relationships with our trading and investment partners. Hence this bill to implement five new income tax conventions that have been signed with Sweden, Lithuana, Kazakhstan, Iceland, Denmark and to make amendments to two existing conventions with the Netherlands and the United States.

The tax conventions or treaties have two main objectives: the avoidance of double taxation and the prevention of fiscal evasion. Since they contain taxation rules different from the provisions of the Income Tax Act, they become effective only if an act giving them precedent over domestic legislation is passed by Parliament. The conventions are generally patterned on the double taxation conventions prepared by the Organization for Economic Co-operation and Development.

Part 6 of this enactment amends the Canada-Netherlands Income Tax Convention Act, 1986, to implement a protocol that amends the income tax convention between Canada and the Netherlands. This protocol adds provisions concerning mutual assistance in the collection of taxes and the elimination of the withholding tax on patent and know-how royalties. A number of technical amendments are also made to clarify existing provisions.

Part 7 of this enactment amends the Canada-U.S. Convention Act, 1984, to implement a protocol that amends the income tax convention between Canada and the United States. That protocol provides that social security benefits will be taxable only in the recipient's country of residence. It also limits the circumstances under which one country may tax gains realized by a resident of the other country on shares of real estate-based corporations.

Concerns have been raised that the Canada-U.S. aspect of this bill will have the effect of increasing taxes paid by Canadians who receive social security payments from the United States. While this may be a concern, most taxpayers affected by this bill will pay less taxes, surely a desirable economic objective.

This bill is more than housekeeping. It will produce immediate results in tax fairness and promotion of trade and investment. The treaties eliminate double taxation by allocating taxing rights between the taxpayer's country of residence and the source of the income. Rather than having the income open to taxation in both countries, the conventions provide that the country of residence would either exempt the income from tax or give credit for the tax paid to the source country. Double taxation treaties have ensured that returns will not be taxed twice.

They are particularly important for Canada where more than 40 per cent of our economic wealth in any one year depends on our exports, our commerce abroad, our direct foreign investment in the flows of information, capital, technology, royalties, dividends, and interest. As well, double taxation conventions normally include provisions which enhance the exchange of information between revenue authorities to prevent tax evasion or avoidance.

For good reason, honourable senators, Bill C-10 received much support across party lines in the other place. They understood that the proposed legislation will benefit Canadian taxpayers, enhance fairness, and increase trade and investment. Debate in the other place and in their committee focused on the proposed convention with the United States as it relates to Canadian citizens who receive U.S. social security benefits.

Currently, Canadians who worked in the United States and retired in Canada are subject to a flat rate of 25.5 per cent on their social security benefits. Were they subject to Canadian taxes on these benefits, as proposed under Bill C-10, several thousand would no longer pay any taxes at all, and thousands more would pay less taxes than they do now.

The fourth protocol of the convention will give the country of residence exclusive rights to tax social security benefits, and will be retroactive to January 1, 1996, the date the present legislation came into effect. It will provide significant and immediate relief to thousands of low-income seniors, both in terms of taxation of future benefits and because Canada and the U.S. will refund the excess paid over the past two years. This legislation will provide immediate tax relief for thousands of low-income seniors.

Given that most Canadians and many Americans live within 80 miles of the 49th parallel, many have worked in one country and retired in the other. As a result, both Canada and the United States pay social security benefits to a significant number of people living in the other country. In order to avoid taxing social security benefits twice, the Canada-U.S. treaty sets out which country may tax them.

Prior to 1996, the country that paid the benefit would not tax that benefit at all. The country where the recipient lived required that 50 per cent of social security benefits be included in taxable income. This meant that people living in Canada and receiving U.S. social security benefits, and U.S. residents receiving Canadian benefits paid tax on only half that amount, and the other half was tax free. While the 50-per-cent inclusion rate reflected the maximum amount of social security American residents included in their taxable income at the time, it did not stand the test of equity in Canada. Neighbours receiving similar levels of benefits paid significantly different levels of tax on them, depending on the benefits' country of origin. Moreover, the pre-1996 legislation also resulted in inequity among individuals receiving the same benefits. Specifically, it meant that high-income U.S. residents received Canadian Old Age Security benefits while Canadian residents could not, due to the OAS recovery tax. Simply put, the pre-1996 rule was doubly unfair. It treated the Canadian getting U.S. benefits better than the same Canadian getting Canadian benefits, and it treated the U.S. residents getting Canadians benefits better than the Canadian resident getting the same benefit.

In 1996, the tax treaty was amended. Under the third protocol, the country that pays the benefit can tax all of it. Therefore, Canada currently taxes Canada and Quebec Pension Plan and Old Age Security benefits going to people living in the U.S., and the U.S. taxes social security benefits going to Canadian residents. When that protocol was negotiated, the U.S. withholding rate was 15 per cent. Thus, the third protocol enhanced tax equity without significantly increasing the tax burden of low-income Canadians.

However, since the rule was negotiated, the U.S. withholding tax has increased from 15 per cent to 25.5 per cent on social security payments coming to Canada. This flat 25.5-per-cent withholding rate has created considerable hardship for thousands of low-income Canadian recipients of U.S. social security benefits, while Canada also holds a similar percentage of tax from outbound Canadian and Old Age Security benefits. Any non-resident pensioner can file a Canadian tax return. This ensures that pension income will be taxed at the individual's marginal tax rates. By the way, this applies to Canadians under the Quebec Pension Plan as well.

• (1450)

As a result, many low-income U.S. recipients will pay little or no Canadian tax on their Canadian benefits. The problem with the current system arises because other than U.S. citizens and resident aliens, the U.S. does not allow non-resident social security recipients to file tax returns. Canadian recipients are therefore subject to a 25.5-per-cent withholding tax regardless of their income level.

Honourable senators, Bill C-10 will eliminate the hardship that current protocol has created. It proposes that the country of residence have the exclusive right to tax social security benefits. It also proposes that the change be retroactive to January 1, 1996, when the third protocol came into force, obviously a very fair measure.

As I said earlier, this means that excess U.S. tax collected since that date will be refunded to Canadian recipients of U.S. social security benefits. This measure will affect about 80,000 Canadian residents. About a quarter of them are or were U.S. citizens living in Canada. Because they were entitled to file U.S. tax returns and calculate their income and pay tax on a net basis, they were not affected by the 25.5-per-cent flat U.S. withholding tax.

Of the remaining 60,000 Canadians, about a third of those at the lowest income levels will be the greatest beneficiaries of this proposed legislation. Under Canadian taxes, they will be at or below our tax margin, and they will pay little or no tax on their U.S. social security benefits. Moreover, they will receive a refund of most or all of their U.S. social security withholding tax paid since 1996.

On the question of refunds, we are told these will be paid immediately following the ratification of this protocol by both Canada and the United States. For its part, the United States has already passed the provision through its Senate and expects President Clinton's signature soon. Following ratification, the Canadian government has undertaken to work with the U.S. to ensure that the refunds can be paid as quickly and as efficiently as possible. For most Canadian residents, Revenue Canada has undertaken to automatically handle refunds without the need for special applications or other forms. This is obviously a wonderful and salutary approach taken by Revenue Canada. It is hoped that cheques for the 1996 taxation year can be issued within a few weeks after the approval of the protocol by both nations. Cheques for 1997 will be assessed once tax returns are filed, and a second cheque will be issued sometime after April 1998.

The middle third of the 60,000 Canadians receiving U.S. social security will not be greatly affected by the proposed legislation. This is because Canada's lowest federal tax rate of 17 per cent, combined with the average provincial tax rate, gives an overall tax rate of 25 per cent. This is roughly equivalent to U.S. withholding tax and means that those in the middle-income band will face about the same tax rate as they do now on the U.S. social security benefits. Just under a third of those now receiving U.S. social security will pay more tax in Canada under the proposed legislation than they do now. This is simply the effect of marginal tax rates.

Honourable senators, while there was much support for Bill C-10 in the other place and it was reported back without amendment, certain members on the opposition side characterized this legislation as a "tax grab." This is patently untrue. In fact, the revenue impact of the fourth protocol will be relatively small — perhaps a few million dollars. This is clearly not a measure whose purpose is to fill the government coffers.

The official opposition has also asserted that Bill C-10 is unfair. While some higher-income individuals may face rates of 35 per cent or 40 per cent on their U.S. social security benefits under the proposed legislation, they will still be better off than their neighbours who receive the same amount of Canadian benefits. That is because under the proposed protocol, 15 per cent of the U.S. benefits will be exempt from Canadian tax. The exemption is a concession to the United States, which taxes, at most, 85 per cent of the benefits it pays to its own residents.

As well, while the proposed legislation will be retroactive to January 1, 1996 for purposes of refunds, applicable 1996 and 1997 taxes will be limited to ensure that they do not exceed the tax that the United States already withheld. Higher-income recipients will not have to pay any extra tax for 1996 and 1997 on their U.S. social security benefits.

It is true that preserving the status quo 25.5-per-cent flat withholding tax would mean that higher-income U.S. social security recipients would not have to pay more tax on their benefits; but the price of reserving the lower tax rate for those with greater means would be that thousands of low-income Canadians would continue to pay higher taxes on their U.S. pension and disability benefits, taxes that they can ill afford. This is not fair taxation, as I am sure honourable senators will agree.

Honourable senators, the fourth protocol is indeed good news. It will return us to a system where the resident country has exclusive rights to tax social security benefits. Canadian residents will only be taxable by Canada on the U.S. pension and disability benefits they receive. This will result in tens of thousands of low- and middle-income Canadians paying less tax and getting refunds of the excess U.S. tax paid since the beginning of 1996. The protocol will also improve tax equity by ensuring that a Canadian getting U.S. benefits will pay substantially the same Canadian tax as one receiving CPP or OAS.

I should now like to turn to the question of Canada-U.S. capital gains as it relates to this measure. In addition to social security, the fourth protocol also resolves the question of taxation of non-resident gains on shares of non-resident corporations. This is a more technical issue and affects fewer taxpayers, but it is important nonetheless.

As honourable senators may recall, in 1995 Canada proposed to amend the Income Tax Act to tax non-resident gains on shares of non-resident corporations and interest in non-resident trusts, where most of the value of the shares or interest is attributable to Canadian real estate or resource property. Although it has not done so yet, the U.S. could, under the current tax treaty rules, impose a comparable tax on residents of Canada. Under the fourth protocol, Canada agrees not to apply the proposed tax change to the United States residents in exchange for the United States' agreement that its real property interest laws will never include shares of corporations that are not resident in the U.S.

Honourable senators, like the social security change, this is win, win. This change will apply as of April 26, 1995, and it means that Canadians who invest in U.S. real estate through Canadian companies will continue to pay Canadian tax rather than any possible future U.S. tax when they sell their shares; and, U.S. investors in U.S. corporations that hold property in Canada will pay U.S. tax when they sell their shares, rather than Canadian tax.

Honourable senators, Bill C-10 also implements new tax treaties with Iceland, Kazakhstan, Lithuania and amends Canada's existing treaties with Sweden, Denmark and the Netherlands.

Again, at second reading, there was much support among members of the other place for these elements of the proposed legislation, and this, honourable senators, is not at all surprising. These double taxation conventions will benefit Canadians by allocating taxing rights between the country in which a taxpayer is resident and the source country of the income or gain. For example, in the new treaty with Lithuania, the convention provides that periodic pension payments will be taxed in the source country at a maximum rate of 15 per cent. As well, the recipient's country of residence will tax only the amount that would be taxed in the source country if the recipient still lived there. Social security pensions will remain subject to full taxation in the country of source, and the rate of withholding tax on periodic annuity payments will be reduced to 10 per cent.

The double taxation conventions will also benefit Canadians by reducing the rates of withholding tax applicable to dividends, interest and royalties. Indeed, in four of these treaties, those with Denmark, Lithuania, Kazakhstan and Iceland, one of the main provisions involved reducing the withholding tax that would otherwise be payable by that source country.

In Canada's case, the Income Tax Act prescribes a rate of 25 per cent, and in the treaties just mentioned, we have reduced it to 5 per cent where the foreign resident has a controlling or major interest in the Canadian corporation.

One of the main concerns in bilateral negotiations has been to reduce to zero withholding taxes on royalties, on scientific know-how, computer software, and things that are most necessary in a modern, industrial nation such as ours. In the treaties with Sweden, Iceland and Denmark, we have confirmed that there will be zero withholding tax on these types of payments.

This, honourable senators, is real progress in a world that is increasingly dependent on information and technology flows. In addition, the conventions generally include provisions for the exchange of information between revenue authorities to prevent tax evasion and avoidance. As I said at the outset of my remarks, these and other tax treaty provisions will promote trade and investment by ensuring that these precious returns, if any, are not taxed twice.

• (1500)

Honourable senators, Bill C-10 will secure very real financial benefits for Canadians. It will ensure that they are not subject to double taxation on their income, and it will promote investment and trade. In an increasingly open global environment, removing barriers to the free movement of people and capital remains vital.

As I outlined at some length, the fourth protocol of the Canada-U.S. treaty will give significant tax relief to thousands of lower-income Canadians who receive U.S. social security benefits and are now subject to a very punitive 25.5-per-cent U.S. withholding tax. Given that the protocol's implementation is retroactive to January 1, 1996, it will also allow for refunds of excessive tax paid over the last two years. This money is vitally important to those modest-income elderly and disabled Canadians.

Honourable senators, in order that Canada may reap the benefits of Bill C-10 as soon as possible, and to expedite the refunds, I urge you to give speedy passage to this bill. The sooner we move, the faster we lubricate the wheels of our economy and institute fuller and fairer, more equitable tax treatment to thousands and thousands of Canadians.

Hon. Herbert O. Sparrow: I have a question. In regard to the provisions in question, you refer to retroactivity to 1996. Is there any provision in this bill for retroactivity further back than that for taxation in other countries that will affect new Canadians here? In other words, is there a provision whereby taxes that were to be paid in a country of origin are now being sought retroactively from the new Canadian taxpayer?

Senator Grafstein: No.

On motion of Senator Johnson, debate adjourned.

THE HONOURABLE JEAN-ROBERT GAUTHIER

BEST WISHES ON RETURN TO THE CHAMBER

The Hon. the Speaker: Honourable senators, before we move to the next item, I should like to note the return to the chamber of our colleague Senator Jean-Robert Gauthier. We welcome him back.

Hon. Senators: Hear! Hear!

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I should like to draw your attention to visitors in our gallery. Dr. Ian White and his wife, Erica. Dr. White is the president of the Manitoba Medical Association.

INFORMATION COMMISSIONER

INCUMBENT REAPPOINTED

Hon. Sharon Carstairs, pursuant to notice of December 3, 1997, moved:

> That, in accordance with subsection 54(3) of the Act to extend the present laws of Canada that provide access to information under the control of the Government of Canada, Chapter A-1 of the Revised Statutes of Canada 1985, the Senate approve the reappointment of John Grace as Information Commissioner, to hold office until April 30, 1998.

She said: Honourable senators, John Grace's appointment has expired. He has graciously agreed to a further period of four months.

As those of us in this chamber know, his is an extremely important position. There have been numerous rounds of consultation. However, it also requires great cooperation from all parliamentary parties to ensure that the person who replaces Mr. Grace is someone who meets the same high standard, and has the approval of all.

Hon. Eric Arthur Berntson: Why not keep him there?

Hon. John Lynch-Staunton (Leader of the Opposition): Just for our information, has Mr. Grace announced his retirement and then accepted to stay longer, or are we just appointing him for a further six months? If we all appreciate his work, why not appoint him for a longer period? I do not know how the law works in this regard. Could you explain the reasons for such a short renewal period?

Senator Carstairs: I understand Mr. Grace's term has expired, and that, in consultation with the government, he has agreed to remain for an additional four months.

Senator Berntson: That does not answer the question.

Senator Lynch-Staunton: That is not the question.

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

Hon. Senators: Agreed.

Motion agreed to.

[*Translation*]

QUEBEC

LINGUISTIC SCHOOL BOARDS—AMENDMENT TO SECTION 93 OF CONSTITUTION—CONSIDERATION OF REPORT OF SPECIAL JOINT COMMITTEE—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Pépin, seconded by the Honourable Senator Lucier, for the adoption of the Report of the Special Joint Committee to Amend Section 93 of the Constitution Act, 1867, concerning the Quebec School System, deposited with the Clerk of the Senate on November 7, 1997.

Hon. Lise Bacon: Honourable senators, our house must dispose of the report by the joint committee to amend section 93 of the Constitution Act of 1867, a section that concerns education.

The amendment of section 93 is being sought by the Government of Quebec through a unanimous resolution of the National Assembly.

Let us go right to the heart of the issue, to the essence of the application. At issue are language and religion, two areas that affect people particularly closely, that have the greatest impact on culture, two areas that have left their mark, and continue to leave a mark, on the history of Quebec and Canada.

That tells you the importance of the application before us.

I would say that the application is important both for the people affected by the amendment sought, and for the credibility of our political institutions, whose effectiveness and flexibility are being put to the test.

[*English*]

In order to fully grasp not only the justification for the action Quebec has taken, but also the underlying causes for the emotion to which it gives rise in some quarters, I believe it is helpful to recall the following dates and historical events.

In 1763, France transferred Cape Breton and Canada to England. Once the Treaty of Paris was signed, King George III of England created the Province of Quebec, and took away the status and rights of the Roman Catholic Church in the newly English territory. It took 11 years, until 1774, for the King of England to adopt the Quebec Act, which recognized Quebec citizens' right to practise the Roman Catholic religion. This act also recognized the right to use the French language and, last, recognized the right to retain the usage and customs of French civil law.

We all know that this openness to Quebec's French-speaking society on the part of the British authorities was also motivated by certain political interests, such as the desire to ensure that French Canadians remained loyal to the British Crown and resisted the temptation to join the revolutionary movement in the American colonies to the south, which were headed inexorably for a break with England, the mother country. Those political interests are a matter of interpretation that I willingly leave to historians. The important thing for Quebec francophones was the recognition of our language by the new political authorities.

• (1510)

Some 75 years passed. In 1848, the English authorities recognized the existence of two official languages in Canada; French and English. Since that time, there have developed in Quebec, in parallel and in peace, two denominational educational structures; one French language and Roman Catholic, the other English language and Protestant.

At the time of the Canadian Confederation in 1867, it was decided to confirm this dual educational system that paired language and denomination, particularly in Montreal and Quebec City, where separate school boards for each denominational group had already been set up. At that time, sociological realities were simpler than is now the case, and the educational structures were satisfactory to both groups. As a result, certain sections concerning Quebec were included in the British North America Act.

[*Translation*]

And it was not until 1961, a century later, that denominational school boards again became an issue. The creation in 1964 of a Department of Education was not the time to resolve this issue.

The creation of this department, a key element in the Quiet Revolution, already moved our educational system a large step forward by bringing it under political and secular, rather than religious, authority. The feeling then was that the time was not right to question the denominational structure of existing school boards.

Since then, we have seen many attempts at reform, to correct what we might call an anachronism in the Quebec school structure. In effect, the denominational administrative and territorial framework of the Quebec school system has become obsolete in 1997. We all knew this, but three decades were to pass before a solution could be found.

On April 15, 1997, the National Assembly unanimously passed a resolution calling on the Canadian government to amend the Canadian Constitution by ending the application to Quebec of subsections (1) to (4) of section 93 of the Constitution Act, 1867.

Upon receiving the request from Quebec's National Assembly, the Minister of Intergovernmental Affairs, Stéphane Dion, said that he had three fundamental questions: the first concerned the amending formula that would apply in this specific instance; the second, whether the amendment sought was a good thing for those involved; and the third, whether the amendment enjoyed a reasonable degree of support from the citizens involved.

The joint committee on which some of our colleagues sat consulted numerous representatives of various Quebec citizens' groups. We heard from many witnesses, from experts in these matters and from authorities for and against Quebec's request.

The committee's response to the questions raised by the minister all point to acceptance of Quebec's application, and I agree with the conclusions of the report.

I also said that I understand the proposed constitutional amendment's causing reactions of distrust or rejection in some. Let us return to our roots, to my brief overview of history: the French language and the Catholic religion were the prime characteristics of our identity as francophones in Canada. "La langue gardienne de notre foi," as we used to repeat in school. So it is not surprising to hear voices raised when the government talks of taking religion out of the school system. What about the epic battles over the creation of the Quebec department of education in 1964. The government was accused of taking the good Lord out of the schools, when it was simply doing its duty, like all the other governments in the world, of looking after its citizens' educational system.

So I was not surprised in recent weeks to hear certain Quebec groups expressing their concern at the application of the Government of Quebec, the Parti Québécois government, which is not shy about using gimmicks, as it itself admitted, to achieve its ends. This time, however, in this particular instance, we must recognize that the action by the Government of Quebec is more than that of a political party, it is the expression of a unanimous vote in the National Assembly. And as we have seen, none of the religious authorities involved, Catholic or Protestant, has objected to Quebec's application. In a word, the reasonable consensus sought within Quebec society has been amply achieved and the principles of democratic life well respected.

Are some people still concerned? Perhaps, but it is up to government officials to properly inform and reassure the public.

I, for one, am reassured to note that the reform following this constitutional amendment concerns only the management of school boards. Quebec's Education Act is explicit on this: The schools will remain denominational and religious instruction will still be provided. It must be kept in mind that religious education is guaranteed by article 41 of the Quebec Charter of Rights and Freedoms, and that the National Assembly passed Bill 109 unanimously last May, which stipulates among other things that parents will be consulted before the end of the third academic year concerning the denominational status of their school.

As for the rights of linguistic minorities, these are protected under section 23 of the Canadian Charter of Rights and Freedoms. It must be kept in mind that amendment 93, which Quebec is calling for, does not in any way weaken the constitutional guarantees relating to minority language instruction. I am pleased, moreover, to see the Minister of Intergovernmental Affairs handle this matter with the ongoing concern of ensuring that any change to recognized minority rights is considered with fairness and equity. In fact, in the new system planned for the linguistic school boards, anglophone minority rights will be better protected than they are at present, in that they will be administered by a single administrative entity regardless of religious denomination, whether Catholic or Protestant. That is not without importance, considering that there has been a downward trend in the numbers of anglophone students in recent years.

It hardly needs to be pointed out as well that, even if the Government of Quebec does not recognize the Constitution Act of 1982, this has no legal impact, since the Constitution applies equally to Quebec and that cannot be challenged before the courts.

• (1520)

Furthermore, it must also be remembered that the introduction of linguistic school boards will allow more effective integration of the non-francophone immigrant population with the francophone majority. And we know that, under the denominational system, the children of immigrants from religions other than Catholicism were usually enrolled in francophone Protestant schools. As the normal clientele of francophone Protestant schools is very small in numbers, many of their schools — particularly in Montreal — found themselves with a proportion of non-francophone students that was so high it had an impact on how well they learned French and integrated with the majority language and culture.

The new school structure, with its linguistic foundation, will thus contribute to a fairer distribution of the allophone — or non-francophone — clientele and the objectives of Quebec's linguistic policy will be that much better served.

Locally, I am of the view that it will be up to elected school officials to see that denominational instruction is offered, in accordance with the democratic wishes of parents. More than ever before, parental responsibility takes on its full significance: the state is not removing religion from the schools, but neither must it impose it. It is up to parents to make their choice known clearly at the local level, and to make sure that their democratically expressed wishes are respected.

In conclusion, I would make three points.

First, the constitutional amendment before us will allow Quebec to adapt its school structure to the needs of a modern society that is outward-looking and confident in its future.

Second, this constitutional amendment procedure also has a symbolic significance that I think it important to mention. On the one hand, it is an example of cooperation between the various communities in a society; on the other, it is an example of cooperation between political adversaries, when the higher interests of Quebec require it.

Third, without wanting to boast in any way, I am delighted to see that it is possible to amend the Constitution to accommodate Quebec's interests, without it being necessary for that province's government to work itself into a public frenzy or threaten to leave Confederation. It seems to me that the present action moves us a little bit further along the road to maturity in our democratic life. I am glad of it and I am sure that Quebecers will not fail to notice this historic moment in our political institutions.

[*English*]

Hon. Michael Kirby: Honourable senators, I rise to comment on the report of the Special Joint Committee to Amend Section 93 of the Constitution Act, 1867, concerning the Quebec school system. I congratulate the members of this chamber for their work on the committee. In particular, I want to congratulate Senators Pépin and Beaudoin for their excellent speeches. I would recommend them to anyone in this place who has not had the opportunity to read them.

Honourable senators, as we know, the committee report and the resolution to which it relates seek to repeal the application to Quebec of subsections (1) through (4) of section 93 of what was known at the time of Confederation as the British North America Act.

These paragraphs are the safeguards that were provided to the denominational minorities at the time of Confederation in order to secure their support for the creation of a new country.

Because the report and the resolution deal with the issue of minority rights — in this case, denominational rights — and because one of the roles of this chamber is to safeguard minority rights — be they regional, linguistic, religious or any other kind of minority right — it is important that we ask ourselves whether the minorities who are affected by this change are in reasonable support of it.

I gave a speech in this chamber on November 7, 1996, dealing with the proposed constitutional amendment to Term 17 in the Newfoundland Terms of Union. I made the argument then that minority rights should be removed only if a majority of the minority approved of them. To know that a majority of the majority approves of taking away minority rights belies the whole issue of minority rights. If a majority can take away minority, minority rights can exist only as long as the majority agrees they can exist. That is patently wrong.

Therefore, in this case, we must consider this question of whether the denominational minorities in Quebec are in reasonable support of this resolution. The report of the special joint committee shows that they were cognizant of this being one of the central issues under discussion, one on which they clearly had to form an opinion.

As the report points out, and as one gathers from reading the press in Quebec, since the decision to seek this constitutional amendment was announced by the Quebec government, it is fairly clear that there is a reasonably strong consensus in Quebec. It is also true to say that there is no significant opposition to this particular amendment. For that reason, honourable senators, I will support it.

However, it does raise a separate question in my mind, one which this chamber should consider at some point, independently of this resolution or of the Term 17 resolution which will be coming up again. The question is this: How do we make a true judgment as to whether the majority of a minority have agreed to a change in their rights? In the case of the original Newfoundland amendment, I opposed it on the simple grounds that only about 53 per cent of the population favoured the amendment. I know Newfoundland very well because both my parents were Newfoundlanders. In looking at the geographical breakdown of the referendum results, in heavily Roman Catholic areas a majority of the minority were opposed to the original version of the Term 17 amendment. I, therefore, voted against it.

It does seem to me that we, as public policy makers who are attempting to defend the rights of minorities, ought not to be left in the position where we are essentially guessing at what the minority really thinks. Given the fact that governments have taken to conducting referenda on a variety of issues, we ought to be able to put in place a procedure for dealing with that question. We should decide that, henceforth, when this chamber deals with issues of minority rights, we will apply a certain test.

Although I am not a member of the Standing Senate Committee on Legal and Constitutional Affairs, I believe that committee should be involved in laying out the ground rules for this test, a test that lays out the generic process with respect to how this chamber would abrogate or change those rights.

In the absence of such a process, and in the absence of any firm data, one can only act, as the committee did in the case before us, to seek a consensus, to seek an understanding of what the population is thinking. Today we can only rely on the fact that where there is no strong opposition reflected in the media — and I do not mean opposition of the media; rather I refer to strong opposition from organized groups expressed in the media — the logical conclusion is that a majority of the minority are inclined to agree with the change.

Having said that, honourable senators, there is a significant degree of misunderstanding of this issue in Quebec and elsewhere. I can remember when the Charter of Rights was included in the Constitution. I can remember the discussions about section 23(1)(*a*) and the linguistic education minority rights issue. Many politicians at federal and provincial levels did not understand the distinction between section 23(1)(*a*), which deals with linguistic rights, and section 93, which deals with denominational rights. People somehow assumed that the two were integrally related.

That assumption, of course, is fairly logical. I grew up in Montreal. I attended school under the Greater Montreal Protestant Central School Board. While it was called the "Protestant Central School Board" and while my father happened to be an Anglican minister, the reality was that the board represented the English school system. It happened to be called a denominational school system, but it was not. It was essentially a school system for everyone who did not happen to speak French. The Protestant churches in Quebec at that time clearly did not think that this was a religious school system in the same sense that the churches of Newfoundland were running religious school systems.

Frankly, this proposed change from a denominational school system to a linguistic school system is a *de facto* change which occurred many years ago. Today we are seeing a *de jure* change to formalize something which has, in fact, already taken place.

• (1530)

Proof of this is contained in Appendix I to the report of the special joint committee, where the Anglican bishop of Montreal states as follows:

> ...the Anglican Church of Canada considers it in the best interest of our Quebec society to move to a non-confessional administration in the school system.

The Bishop of Montreal's letter then goes on to point out that this is what has existed for a very long time. As best as I can understand, there has been no strong opposition to this change from any of the Protestant churches. As for the Catholics, in Appendix H to the committee report, the Head of the Assembly of Quebec Roman Catholic bishops states:

> ...the bishops reiterate that they do not oppose the establishment of such linguistic school boards...

The letter goes on to state that this has been the position of the Roman Catholic bishops since the early 1980s.

Honourable senators, the only evidence available to us is the consensus of the witnesses appearing before the committee, and a review of the media and statements made by the leadership of both Protestant and Roman Catholic denominational groups in Quebec. As a result of that evidence, one can only conclude that there is no evidence to suggest that either public opinion or the majority of the minority is opposed in any significant way to this change. Therefore, one must conclude that the majority of the minority is in favour of it. As such, I am prepared to support it.

To come back to the point I raised at the beginning of my remarks, I find it difficult to be left in a situation in which I have to make that judgment based on circumstantial evidence, without any attempt made to obtain an understanding of the true views of the minority. Once this issue is dealt with, and once the proposed constitutional resolution on Term 17 concerning the Terms of Union between the Province of Newfoundland and Labrador and Canada are out of the way, I hope that the Standing Senate Committee on Legal and Constitutional Affairs will look at this broad process question in order to establish a set of ground rules that will serve those of us who have to make these judgments in the future.

With that caveat, I am delighted with the report of the special committee. I am delighted to support the proposed amendment to the Constitution.

Hon. Jerahmiel S. Grafstein: Honourable senators, would the Honourable Senator Kirby entertain a question or two?

Senator Kirby: Absolutely.

Senator Grafstein: The question he raised was of concern to some of us on this committee. That is to say, how could we formulate in our own minds a clear consensus of the so-called minorities? This particular question is a little more complex because, in Quebec, the majority of the population is French-speaking, and the majority of French-speaking Quebecers is Catholic. Section 93(1)(*a*) deals with Catholic denominational rights. Therefore, it is a little more difficult to incorporate the idea of a majority in a minority group in that province. That does not pertain to groups within those groups, or the English-speaking minorities, which is another question.

Having said all that, how can senators suggest a test of evidence to a province that has a subject matter which is exclusively within its jurisdiction under the Constitution? Our friends in the Reform Party have said this over and over again. To my mind, I could only consider what I heard in this committee, which, in a traditional way, was overwhelming evidence about the clarity of the viewpoints in Quebec. That is to say the legislature, the heads of 68 groups and over 100 witnesses. Every point of view was expressed, including those of the churches and the minority groups. How are we at the federal level — and I ask Senator Kirby this because of his experience — to demand of a provincial jurisdiction a formula for divining the public interest? I find it difficult to see how we can do that and still respect the Constitution.

Senator Kirby: Honourable senators, I am not suggesting for a moment that we ought to be telling provincial governments in areas of pure provincial jurisdiction how they ought to make decisions on what constitutional amendment they will propose to the federal government. Obviously, that is their responsibility.

At any rate, it is misleading to say that this matter before us is an area of provincial jurisdiction; in this case, it is an area in which the federal government has a role because it is amending the Constitution.

The issue I am raising is this: If we are to exercise our role, I would be much happier in exercising my role to change the rights of any group, be they a minority or a majority, if I felt I truly understood, through some reasonable and accurate way, the process that brought us to change. I am not disputing the process in this case. I complimented the committee on the process and on its conclusions. I concede there is no evidence in this particular case that does notsupport the committee's conclusions.

However, in the case of Term 17 in Newfoundland, for example, which also involves provincial jurisdiction, I thought I made a compelling argument. The fact that I spoke for an hour demonstrates that I felt pretty passionate about it. I truly believe that in that case we did not know what the minorities thought. Indeed, it was my belief that the minorities were opposed. That has nothing to do with how provinces ought to behave. Provinces can do whatever they want to do. While it is true that this area does not come under federal jurisdiction in the legal sense, there is a role for Parliament to play here. If federal parliamentarians are to make judgments about whether a minority or a majority agrees or disagrees with a proposition related to their rights, then we ought to be able to do so with as much hard evidence as possible. I refer neither to anecdotal evidence, nor to evidence obtained solely from newspapers or the media, nor to evidence obtained solely from groups appearing before us. Given the importance that I personally attach to constitutional amendments and minority rights therein, I feel we ought to have a much tougher test than we have, for example, for a bill. A much tougher test ought to be required when we are talking about changing the rights of a particular group of citizens, whether they be the minority or the majority. That is my view.

Senator Grafstein: Honourable senators, I will not belabour this matter, other than to point out that in the testimony before this committee opinion polls, among other things, were submitted as part of the evidence. I hope the honourable senator will examine that evidence because he is an expert in that field.

Senator Kirby: Honourable senators, I thought I was clear in my statement. I do not have any problem with where we ended up. That is because it was so overwhelming. In the original Newfoundland case, I thought we were wrong to support what happened. I thought that because minority rights were being affected without proof of what the majority of the groups affected actually thought.

Now we have two examples. In my view, this one is easy to support because of all the positive evidence that has been put before us. On Term 17, the evidence was neutral to negative. Before we supported the original Term 17, we should have had evidence that was overwhelmingly positive.

On Term 17, I did not like being put in the position of having to make a judgment. In this case, the evidence is so overwhelming that I agree with Senator Grafstein that supporting it is not a problem.

On motion of Senator Kinsella, for Senator Lavoie-Roux, debate adjourned.

• (1540)

CUSTOMS TARIFF

REPORT OF COMMITTEE

Leave having been given to revert to Reports of Committees:

Hon. Michael Kirby, Chairman of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Thursday, December 4, 1997

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

FIFTH REPORT

> Your committee, to which was referred the Bill C-11, An Act respecting the imposition of duties of customs and other charges, to give effect to the International Convention on the Harmonized Commodity Description and Coding System, to provide relief against the imposition of certain duties of customs or other charges, to provide for other related matters and to amend or repeal certain Acts in consequence thereof, has examined the said bill in obedience to its Order of Reference dated Wednesday, November 26, 1997, and now reports the same without amendment.
>
> Respectfully submitted,
>
> MICHAEL KIRBY
> *Chairman*

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

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

TOBACCO ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Stanley Haidasz moved the second reading of Bill S-8, to amend the Tobacco Act (content regulation).

He said: Honourable senators, in rising this afternoon to begin second reading of Bill S-8, which I propose for urgent and serious consideration by all honourable senators, I wish to convey my great sense of urgency and relief to have this opportunity, perhaps my last, to address the Senate on the pressing need to effectively restrict tobacco content. On six previous occasions in this place, I have tabled public bills enumerating the many ill effects of habitual smoking, particularly cancer of the lungs, cancer of the pancreas, cancer of the throat, cancer of the urinary bladder, as well as ischemic heart disease and other chronic chest diseases which I believe are of epidemic proportions. Conservative estimates by the Department of Health and other health agencies in Canada have determined by their studies that, of all deaths in Canada in 1995, more than 48,000 were attributed to tobacco smoking, and all of these premature deaths and totally preventable.

I regret to say that a higher basis of projection is even more likely when we consider that, since 1965, the rate of lung and breast cancer in women has increased and the age threshold advanced to younger years. In March of this year, the Canadian Cancer Society stated that a third of all incurable cancers in Canada are now attributable to tobacco use and, for the first time, the rate of increase of lung cancer in women has overtaken that of men.

I would add that I predict that the loss to life due to tobacco will be approximately 50,000 in 1997. In addition to this great human cost, there is the enormous cost of $24 billion annually to the Canadian economy in direct and indirect costs due to tobacco-related diseases.

In the face of such shocking statistics, it is easy to sometimes lose sight of the importance of one very unassuming word — "habitual." Smoking is deadly because it rapidly becomes a serious addiction. Young persons, especially young women, continue to get hooked on cigarette smoking, all the while aware that tobacco is the killer of one in three incurable cancer victims. Most of the recent victims have been women because girls are beginning to smoke at an earlier age.

Often overlooked, ignored or perhaps just forgotten are the 21 tobacco-related illnesses, combined with the various cancers I mentioned a few moments ago. There are also the deaths due to fire accidents caused by neglectful smoking. Tobacco kills more Canadians than any other lethal substance and has killed more than were killed in the two great wars of this century.

What is the reason for these calamities? A preventable cause — cigarette smoking — which has addicted some people because of its high content of nicotine and toxic tars. Unfortunately, smokers neglect and ignore the drastic harm to themselves for one reason alone: their addiction to that highly addictive substance nicotine, often described by clinicians as equal to the addiction to heroin and cocaine.

The cigarette smoking habit we see in our teenagers arises from an experiment with tobacco, but this experiment usually starts at a younger age than other typical teen-age experiments. However, unlike other experiments, the experiment with cigarettes is lethal because they become addicted to nicotine.

Honourable senators, Bill S-8 seeks to redress this great tragedy and the blindness of public policy towards it. The Tobacco Act which we passed last April, earlier this year, came into force last spring before the general election. It has produced none of the hoped-for regulations that would characterize it as legislation in answer to a serious and pressing health concern.

This issue is very serious. Let us recall what the Supreme Court said in the *RJR MacDonald* case. At that time, the court warned that such a failure could endanger future legislation on the grounds of questionable jurisdiction. The court required that any intrusion into personal corporate freedoms, particularly in areas normally under provincial administration, would need strong justification and be rationally related to specific public policy, for example, genuine health goals.

That recent Tobacco Act purported to have one aim: to curb the onset of smoking as a habit in our youth. Yet, without addressing in statutory language the root cause of addiction, that act is in danger of losing what little toehold it may have gained in the battle for the future health of so many Canadians.

The main weakness of the Tobacco Act is its excessive dependence on regulations to give it flesh. Section 22(2) even declared itself, unlike other acts of Parliament, to be subject to the regulations. Senator Beaudoin asked the Standing Senate Committee on Social Affairs, Science and Technology during hearings last spring and winter: "How can regulations be paramount? The act is paramount." Constitutional expert Professor Gall agreed by stating, "It is strange." Adding irony to understatement, he continued:

> It means we will have in this section a great deal of regulatory control.

The irony is that those in charge of our health — the government and the Minister of Health — have not revealed to date any meaningful exercise of this administrative innovation where it would most count to characterize the act as real, true, health legislation.

• (1550)

If just to regulate advertising and the sponsorship of various entertainment events, moderate steps would be no surprise, since the Supreme Court warned that to curb expression must be both proportional and rationally related to expected health goals, and there must be as little intruding as possible on either the advertising industry or the provincial jurisdictions that normally regulate it.

About regulation in general, Senator Gigantès put it strongly in committee when he said:

> I am very worried about regulations because they are often "007 licences" for public servants. They write the regulations to make their lives easier and not the lives of citizens...

Whether one takes an extreme or moderate view of regulation, why should product regulation, a legitimate exercise of federal jurisdiction in the interest of public health, be held to ransom by hesitancy over less justifiable intrusions upon the freedoms of expression in advertising?

Government may well overdo its Quietism as it advisedly lies low to avoid legal challenge in the one area where it fails to act, and in the only area where there is pressing need and unquestioned jurisdiction: public health.

Whatever view you take of advertising regulation, you do expect to see regulations that deal squarely with the health issues, as these were constantly cited by the former Health Minister, Mr. Dingwall, ,to justify this act under the ambit of health rather than industry.

During our hearings last spring, a legal academic from Calgary, Professor Lessard, who strove to show support for the act, could not find much to praise in its avoidance of the pressing health issues: narcoticized addiction and a serious escalation in the numbers of cancers in young women because they started smoking at an early age. In answer to this point by Senator Doyle in our committee, Ms Lessard supposed that "given the exigencies of the situation, an addictive substance that is widely used," the Supreme Court could not endorse one of "the more satisfying approaches." However, the only approach she set aside was the "direct prohibition of smoking": obviously one incapable of support by many people in Canada and never proposed by the Minister of Health or the government.

It remains, however, that Parliament, I deeply hope, will soon prohibit addictive levels of harmful substances, just as I propose this afternoon in Bill S-8. In support of this, I have the benefit of expert advice obtained through the Senate Law Clerk, many medical clinicians in Ottawa and in Toronto, scientific researchers, as well as many epidemiologists.

Without the proposed amendment, the Tobacco Act tackles only lifestyle advertising outside the ambit of demonstrable health consequences. Specifically, it does not create a basis for monitoring the onset of addiction in relation to the direct sources of harm — the most noxious things publicly consumed. Therefore, the act remains at risk of failing to demonstrate its jurisdiction, its openness to the public, or its proportion and rationality.

The act thus remains at risk of the same embarrassing loss as the former — impugned restrictions on advertising. After all, why not advertise a product that can boast non-addicting levels of nicotine and such low total tar production that even habitual smokers will cut greatly their risks of cancer, ischemic health disease and other health disorders?

The bill before us, Bill S-8, which I propose to you, honourable senators, is an urgent call for such regulated levels of nicotine and toxic tars in tobacco products manufactured in Canada. As with improved nicotinic gums and other devices to curb addiction, such advertisements would be valued even by a young audience that needs to know that addiction is serious business, and requires serious therapy.

In this vein, I have written several times to previous federal and provincial ministers of finance and health requesting them to grant income tax relief for recognized tobacco cessation treatments that are not covered by health insurance plans.

I return again to our committee, where Senator Doyle aptly pointed out that had nicotine been declared a narcotic or tobacco a noxious substance, the question of jurisdiction could not arise because you would be dealing with the sources of harm in tobacco; what my friend declared "the most damaging drug that we deal with in this country."

Like the Apostle Paul, spurned by the Athenians, this factual observation was met with the words "that is certainly something to contemplate for the future." Honourable senators, the future — deferred to since the early committees on smoking in 1968 in the House of Commons — is long since past, and there is still no disputing that a regulatory scheme left to itself is adequate to the emergency.

Honourable senators, aside from the enormous personal, familial and social tragedies of widespread debility and death, smoking costs the economy of Canada in excess of $24 billion annually, directly and indirectly, through lost years of productivity, chronic health care and bereavement, let alone personal taxes. Again, this figure is just a projection, tied in part to preventable morbidity and early death.

Honourable senators, I should like to bring to your attention the fact that the President of the Canadian Medical Association recently stated for the record that:

> Yes, young persons are much more susceptible to the onset of addiction than older persons because of their metabolic processes that have not yet fully matured.

Regrettably, our committee report added nothing to elucidate this fact, or that youth is the intended target of nicotine dosages that tobacco manufacturers put into cigarettes and other tobacco products.

• (1600)

If, in the short term, governments do consider increasing tax on smoking or smoke products, any proceeds, I believe, should assist the market entry of effective off-nicotine therapies, including, for example, as was mentioned in our committee, a new cigarette-like device that does not combust tobacco while delivering a dose of nicotine replacement, a proven molecule such as mecamylamine.

Even without increasing taxes, the Canadian government can now lead the way to a vast international market in safer, less-addictive tobacco products. While some may call it a "green" tobacco movement, I say let it be so.

Statutory limits, adjusted by real regulation as in the bill that I have proposed to you, honourable senators, will foster a great transformation as far as health is concerned. Our own industries know it but have been recoiling, in a confrontational mindset, from admitting that they themselves are as ready as they are. Ultralight cigarette formulations that would soon be able to meet the standards set forth in Bill S-8 are virtually a reality today.

The representatives of the tobacco companies who came to our committees said:

> ...the market share of the ultralights is low.

This, however, was conveniently artificial, since alternate choices abound for the habituated smoker.

I should like to bring to your attention in my final remarks that increased prosperity follows the subsidence of tobacco-related illness and debility. I take my estimate from various sources, including the exceptional work of Canada's own Neil Collishaw at the World Health Organization in Geneva, who spoke at a world conference on tobacco recently. From Mr. Collishaw's work, I have determined that the Canadian economy loses $24 billion today, directly and indirectly, from tobacco product use.

Let us also take into consideration that from customs, excise, sales taxes and fines, the federal government collects as much as $2 billion a year from the use of this tobacco which is highly narcotized. However, look at what it loses. Even if every province collected another billion, which they do not, the net burden is twice the gain.

Could our Minister of Finance, whose father I served as a parliamentary secretary in 1964, please do some simple arithmetic? Every economist knows that living, breathing people are the real engine of the Canadian economy. A massive majority of smokers recently surveyed in North America wished one thing first and foremost. Nearly everyone said that they desired that they themselves, or their younger counterparts, could be freed from their dependency on tobacco. That is a great choice, because dependency on tobacco is not freedom of choice.

Honourable senators, while I might have detailed during my speech this afternoon some of the clauses in Bill S-8, suffice it to say that Bill S-8 provides a statutory framework whose parameters are adjustable by regulation. In time, as our tobacco industries reorient and discover how to manufacture an ever less harmful product, conquering world markets of smokers already at risk from very harmful products, it may prove auspicious to lower still further the limit of nicotine per gram of whole tobacco in a cigarette as Bill S-8 provides.

In conclusion, honourable senators, I appeal to you to take Bill S-8 under serious consideration this time. Unfortunately, the previous bill similar to this one was stalled in committee. I do not know why. I hope you will not hesitate to study with interest a tobacco product other than a cigarette, particularly if I told you that its leaves had been blanched of nicotine and its filter eliminates tars. As a symbol to our endangered youth, I leave it to you, honourable senators, to cherish with care the youth of Canada.

Let us use our powers well. Let us not only foster debate on Bill S-8 but also expose the real truth — the truth that tobacco is an addictive substance, and that over 50 of the more than 4,000 tars in a smoking cigarette are known carcinogenic substances.

Honourable senators, if we pass Bill S-8, we will gain forever the gratitude and praise of the Canadian people.

Hon. Philippe Deane Gigantès: Honourable senators, I should like to support Senator Haidasz. I have lost my father, my wife and now my brother to tobacco. He is right.

On motion of Senator Milne, debate adjourned.

STATE OF FINANCIAL SYSTEM

FOURTH REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Banking, Trade and Commerce (*budget—study on the state of the financial system in Canada*), presented in the Senate on November 26, 1997.

Hon. Michael Kirby moved the adoption of the report.

He said: Honourable senators, I might just say a word about what is contained in this particular committee report. Essentially, it is the committee budget for the remainder of the current fiscal year. In contrast to the tradition of the Banking Committee, which is that it does not travel outside the country, this budget contains an item for a week-long series of meetings in Europe.

This has come about by virtue of the fact that we have been asked by the Superintendent of Financial Institutions, Mr. John Palmer, to undertake on his behalf an assessment of the effectiveness of the Canadian regulatory system for financial institutions in comparison with the new, changed system in the U.K. and other European countries.

The superintendent asked the Banking Committee to do this study rather than have it done by an outside consultant because he felt that, given the history of the Banking Committee's understanding of financial institutions and given our essential credibility with the media and with various groups inside the government on these issues, an assessment of what needs to be done to improve the Canadian regulatory system would better be done by us than by consultants.

Therefore, honourable senators, that is the policy rationale, or the rationale for this particular budget item.

I should finish by saying that the final piece of this study will be done some time in the second quarter of next year, which will involve meetings in Washington with various senior officials from the Federal Reserve and from the Secretary of Treasury and Secretary of Commerce in the United States. I mention this so you will understand that the study has both a European component and a U.S. component. I simply point out that the study is not being undertaken at the initiative of the Banking Committee, although we are absolutely delighted to be doing it for OSFI, but because we have been asked by OSFI to undertake this study on their behalf.

• (1610)

Motion agreed to and report adopted.

BUSINESS OF THE SENATE

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, as a result of discussion with the other side, I move that the sitting be suspended to the call of the Chair at approximately 5:45 p.m.

The Hon. the Speaker: Is it agreed, honourable senators, that we suspend the session to the call of the Chair at approximately 5:45 p.m.?

Some Hon. Senators: Agreed.

Hon. David Tkachuk: Does it require unanimous consent? No, we do not agree.

The Hon. the Speaker: Is there no agreement? I must ask for a vote.

Will those in favour of the suspension of the sitting until approximately 5:45 p.m. please say "yea"?

Some Hon. Senators: Yea.

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

Senator Tkachuk: Nay.

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

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, I have a point of order.

I detected from Senator Tkachuk that an issue of order was being questioned. Would His Honour advise the Senate whether or not unanimous consent is required under our rules for the request of suspension? That is my understanding of the question that was asked.

Senator Tkachuk: That was my question.

The Hon. the Speaker: My understanding is that it is a majority decision, not one that requires unanimity. However, if someone expresses opposition, I have no choice but to ask for a voice vote. It is on division, then.

I leave the Chair, to return at approximately 5:45 p.m., at the call of the bell.

The sitting of the Senate was suspended.

• (1750)

The sitting of the Senate was resumed.

CANADA PENSION PLAN INVESTMENT BOARD BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-2, to establish the Canada Pension Plan Investment Board and to amend the Canada Pension Plan and the Old Age Security Act and to make consequential amendments to other acts.

Bill read first time.

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

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, I move that the bill be placed on the Orders of the Day for second reading on Monday next.

Hon. Eric Arthur Berntson: Honourable senators, I rise on a point of order.

In the *Rules of the Senate of Canada*, rule 57(1) reads:

> Two days' notice shall be given of any of the following motions:
>
> (*f*) for the second reading of a bill.

Rule 7(*f*) reads:

> "Two days' notice" means a notice where a sitting day intervenes between the day on which the notice is given and the day on which the motion or inquiry is made.

If notice is given tonight, where is the intervening day if we are to begin second reading stage on Monday? The only way that can work, in my humble opinion, is if we sit tomorrow. If we are not sitting tomorrow, it is not a day. It simply is not a day as far as our work is concerned here in the chamber.

I would seek clarification on that, Your Honour.

Senator Carstairs: Honourable senators, it is my understanding that, since the adjournment motion has not yet been moved, tomorrow is still a sitting day. Therefore, if it is considered a sitting day, the second day would be Monday.

Senator Berntson: After the adjournment motion, my point will be valid for Monday.

Senator Gigantès: It is too late.

Senator Berntson: No, it is not.

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

Honourable senators, the rule book clearly says "sitting day." It does not say a day on which we have a sitting. Our sitting days, as outlined, are Monday, Tuesday, Wednesday, Thursday and Friday. Those are sitting days. My understanding is that it has always been treated that way in the past. Even if we do not sit on a Friday, it is considered a sitting day. That certainly has been the practice in the Senate in the past.

If honourable senators wish to change the practice, that is within their control, but that has been the practice in the Senate.

Senator Berntson: I will not push my cause any further at this time, except to point out how ludicrous it is. For instance, if we were to adjourn on June 10 until September 4, is every day of the summer a sitting day?

The Hon. the Speaker: In my opinion, the motion is in order. Tomorrow is a sitting day.

Some Hon. Senators: Question.

The Hon. the Speaker: It is moved by the Honourable Senator Carstairs, seconded by the Honourable Senator Robichaud *(L'Acadie-Acadia)*, that this bill be placed on the Orders of the Day for second reading Monday next, December 8, 1997.

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

Some Hon. Senators: Agreed.

Hon. John Lynch-Staunton (Leader of the Opposition): On division.

Motion agreed to, on division, and bill placed on the Orders of the Day for second reading on Monday, December 8, 1997.

ADJOURNMENT

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

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

> That, when the Senate adjourns today, it do stand adjourned until Monday, December 8, 1997, at 2 p.m.

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

Hon. Senators: Agreed.

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

Hon. Eric Arthur Berntson: Honourable senators, I wish to speak on a point of order.

Now that the motion has been moved to adjourn until Monday next, would it be proper to interpret that tomorrow is not a sitting day?

Senator Carstairs: Honourable senators, His Honour has been very clear that the sitting days of the Senate are Monday, Tuesday, Wednesday, Thursday and Friday. That is the basis upon which the motion was made for second reading of this bill on Monday.

Hon. John Lynch-Staunton (Leader of the Opposition): We should like to know where in the rules it says that a sitting day is a day upon which we can sit and not a day upon which we do sit.

The Hon. the Speaker: The Honourable Senator Lynch-Staunton has asked where it says that in the rule book. I do not believe it says that in the rule book, but that has been the practice that the Senate has followed in in the past. I do not have the precedents immediately at hand, but my recollection is that the practice has always been that, provided there is a day on which we could be sitting, we consider it a sitting day.

I am in the hands of the Senate on this matter. I am operating on the basis of past practice.

Do you wish a ruling on the matter?

Senator Berntson: Yes.

The Hon. the Speaker: I will have to ask for some time to produce the precedents. I do not have them at hand. If it is your wish, I will ask for time and come back later this evening.

Senator Lynch-Staunton: You could bring them tonight, tomorrow or on Monday. I am accommodating.

Hon. Eymard G. Corbin: Honourable senators, I should like to know what we are presently discussing. When the honourable senator initially rose on this point, he suggested that we undo what had already been decided. That is totally unacceptable to me. This house has decided that the motion initially put by Senator Carstairs was in order, and that was accepted on division. He is now implicitly asking us to undo that. I do not follow him in that respect.

The only thing before us now is the motion that we adjourn until Monday. He cannot go back under the current motion and start discussing again what is a sitting day. We have resolved that issue, honourable senators.

Therefore, I suggest we move ahead and that Senator Carstairs' motion be put to the house at this time.

Senator Berntson: Honourable senators, originally I simply asked for the definition of "sitting day." Second, under the adjournment motion we will not return until Monday, so that takes tomorrow out of the equation.

Senator Corbin: Tomorrow is still there.

Senator Berntson: It is on the calendar but it is not a sitting day as far as the Senate is concerned.

• (1800)

Hon. Nicholas W. Taylor: Honourable senators, no one enjoys being a back room lawyer more than I, but *Beauchesne's Parliamentary Rules & Forms,* paragraph 276 of the 6th edition refers to "Hours of Sittings" and notes that the house meets on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays. Paragraph 278 states that the house can also provide for sittings on Saturdays and Sundays.

Senator Berntson: Good.

Senator Taylor: In other words, you automatically have sittings five days a week, unless you authorize otherwise. All of those days are sitting days.

Senator Berntson: Does that include Christmas Day and New Year's Day?

Senator Taylor: I do not know how many angels dance on the head of a pin. I do not think the arguments put forward by opposition members are relevant.

Senator Lynch-Staunton: Already the time is 5:55 p.m.

Senator Taylor: Beauchesne's says that there are sittings five days a week. We all know that we do not sit five days per week, 52 weeks per year. We sit whenever we decide to sit. When we want to sit on a Saturday and Sunday, we must make a special order. It is straightforward.

Senator Berntson: We will deal with it on Monday when we have all of our people here.

Senator Lynch-Staunton: We will also have the precedents.

The Hon. the Speaker: Honourable senators, is there agreement that we will not see the clock?

Hon. Senators: Agreed.

The Hon. the Speaker: Therefore, I will not see the clock.

Are there any further points that any honourable senators wish to make?

If not, I will put the motion.

It is moved by the Honourable Senator Carstairs, seconded by the Honourable Senator Robichaud *(L'Acadie-Acadia)*,with leave of the Senate and notwistanding rule 58(1)(*h*):

> That when the Senate adjourns today, it do stand adjourned until Monday next, December 8, 1997, at two o'clock in the afternoon.

Is leave granted, honourable senators?

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

Senator Lynch-Staunton: On division.

Motion agreed to, on division.

The Senate adjourned until Monday, December 8, 1997, at 2 p.m.

THE SENATE OF CANADA
PROGRESS OF LEGISLATION
(1st Session, 36th Parliament)
Thursday, December 4, 1997

GOVERNMENT BILLS
(SENATE)

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-2	An Act to amend Canadian Transportation Accident Investigation and Safety Board Act to make a consequential amendment to another Act (Sen. Graham)	97/09/30	97/10/21	Transport and Communications					
S-3	An Act to amend the Pension Benefits Standards Act, 1985 and the Office of the Superintendent of Financial Institutions Act (Sen. Graham)	97/09/30	97/10/21	Banking, Trade and Commerce	97/11/05	7	97/11/20		
S-4	An Act to amend the Canada Shipping Act (maritime liability) (Sen. Graham)	97/10/08	97/10/22	Transport and Communications					
S-5	An Act to amend the Canada Evidence Act and the Criminal Code in respect of persons with disabilities, to amend the Canadian Human Rights Act in respect of persons with disabilities and other matters and to make consequential amendments to other Acts (Sen. Graham)	97/10/09	97/10/29	Legal and Constitutional Affairs	97/12/04	1			
S-9	An Act respecting depository bills and depository notes and to amend the Financial Administration Act (Sen. Graham)	97/12/03							

GOVERNMENT BILLS
(HOUSE OF COMMONS)

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-2	An Act to establish the Canada Pension Plan Investment Board and to amend the Canada Pension Plan and the Old Age Security Act and to make consequential amendments to other Acts	97/12/04							
C-7	Act to establish the Saguenay–St.Lawrence Marine Park and to make a consequential amendment to another Act	97/11/25	97/12/02	Energy, Environment and Natural Resources					
C-10	An Act to implement a convention between Canada and Sweden, a convention between Canada and the Republic of Lithuania, a convention between Canada and Republic of Kazakhstan, a convention between Canada and the Republic of Iceland and a convention between Canada and the Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and to amend the Canada-Netherlands Income Tax Convention Act, 1986 and the Canada-United States Tax Convention Act, 1984	97/12/02							
C-11	Act respecting the imposition of duties of customs and other charges, to give effect to the International Convention on the Harmonized Commodity Description and Coding System, to provide relief against the imposition of certain duties of customs or other charges, to provide for other related matters and to amend or repeal certain Acts in consequence thereof.	97/11/19	97/11/27	Banking, Trade and Commerce	97/12/04	none			
C-13	Act to amend the Parliament of Canada Act	97/10/30	97/11/05	Legal and Constitutional Affairs	97/11/06	none	97/11/18	97/11/27	32/97
C-16	Act to amend the Criminal Code and the Interpretation Act	97/11/18							
C-22	An Act to Implement the Convention on the Probihition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction	97/11/25	97/11/26	Foreign Affairs	97/11/27	none	97/11/27	97/11/27	33/97
C-23	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31,1998	97/11/26	97/12/04						
C-24	An Act to provide for the resumption and continuation of postal services	97/12/02	97/12/03	Committee of the Whole	97/12/03	none	97/12/03	97/12/03	34/97

COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-220	An Act to amend the Criminal Code and the Copyright Act. (profit from authorship respecting a crime) (Sen. Lewis)	97/10/02	97/10/22	Legal and Constitutional Affairs					

SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-6	An Act to establish a National Historic Park to commemorate the “Persons Case” (Sen. Kenny)	97/11/05	97/11/25	Energy, the Environment and Natural Resources					
S-7	An Act to amend the Criminal Code to probihit coercion in medical procedures that offend a person’s religion or belief that human life is inviolable (Sen. Haidasz, P.C.)	97/11/19	97/12/02	Legal and Constitutional Affairs					
S-8	An Act to amend the Tobacco Act (content regulation) (Sen. Haidasz, P.C.)	97/11/26							
S-10	An Act to amend the Excise Tax Act (Sén. Di Nino)	97/12/03							

CONTENTS

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