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OFFICIAL REPORT
(HANSARD)

Monday, December 8, 1997

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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

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THE SENATE

Monday, December 8, 1997

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

Prayers.

ROUTINE PROCEEDINGS

FIREARMS REGISTRATION CERTIFICATES REGULATIONS

REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE TABLED

Hon. Lorna Milne, Chair of the Standing Senate Committee on Legal and Constitutional Affairs tabled the following report.

Monday, December 8, 1997

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

FOURTH REPORT

Your committee, to which was referred the proposed Regulations pursuant to Section 118 of the *Firearms Act*, has, in obedience to the Order of Reference of Thursday, October 30, 1997, examined the said Regulations and now reports the same, having heard evidence from the Department of Justice.

Respectfully submitted,

LORNA MILNE
Chair

NEWFOUNDLAND

CHANGES TO SCHOOL SYSTEM—AMENDMENT TO TERM 17 OF CONSTITUTION—REPORT OF SPECIAL JOINT COMMITTEE TABLED

Hon. Joyce Fairbairn, Joint Chair of the Special Joint Committee on the Amendment to Term 17 of the Terms of Union of Newfoundland, informed the Senate that, pursuant to the Senate's order of reference of November 5, she had deposited with the Clerk on Friday, December 5, 1997, the final report of the Special Joint Committee.

The Hon. the Speaker: When shall this report be taken into consideration? On motion of Senator Fairbairn, report placed on the Orders of the Day for consideration on Wednesday, December 10, 1997.

LEGAL AND CONSTITUTIONAL AFFAIRS

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

Hon. Lorna Milne: Honourable senators, I give notice that on Tuesday next, December 9, 1997, I will move:

That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit at 3:15 p.m., Wednesday, December 10, 1997, even though the Senate may then be sitting and that rule 95(4) be suspended in relation thereto.

ABORIGINAL PEOPLES

ROYAL COMMISSION ON ABORIGINAL PEOPLES—NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY RECOMMENDATIONS

Hon. Charlie Watt: Honourable senators, I give notice that on Tuesday next, December 9, 1997, I will move:

That the Standing Senate Committee on Aboriginal Peoples be authorized to examine and report upon the recommendations of the *Royal Commission Report on Aboriginal Peoples* (Sessional paper 2/35 — 508.) respecting Aboriginal governance and, in particular, seek the comments of Aboriginal peoples and of other interested parties on:

1. the new structural relationships required between Aboriginal peoples and the federal, provincial and municipal levels of government and between the various Aboriginal communities themselves;

2. the mechanisms of implementing such new structural relationships and;

3. the models of Aboriginal self-government required to respond to the needs of Aboriginal peoples and to complement these new structural relationships; and

That the committee present its report no later than November 30, 1999.

QUESTION PERIOD

NATIONAL DEFENCE

SEARCH AND RESCUE HELICOPTER REPLACEMENT PROGRAM—
POSSIBILITY OF LEGAL ACTION ARISING FROM CHOICE
OF CONTRACTOR—GOVERNMENT POSITION

Hon. J. Michael Forrestall: Honourable senators, based upon a news story in *The Globe and Mail*, it appears that the government faces potential lawsuits from at least three or four competitors for the search and rescue helicopter contract, depending upon the winner of the contract — Boeing, Sikorsky, Eurocopter, or Westland and Augusta. Has the government been threatened, or does the government have reason to believe that it faces legal action over the issue of the new search and rescue helicopter?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, certainly not to my knowledge.

SEARCH AND RESCUE HELICOPTER REPLACEMENT PROGRAM—
POSSIBILITY OF SECOND TENDERING PROCESS—
GOVERNMENT POSITION

Hon. J. Michael Forrestall: Honourable senators, the news stories are suggesting that the government is going to a second tender to avoid facing potential lawsuits. Based upon this possibility and given that the government has wasted almost $1 billion on cancellation fees and will spend much more on lawsuits, will the government attempt to save the Canadian taxpayer a large sum of money by purchasing the same helicopter for both search and rescue and maritime operations — in other words, return to commonality?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I am not aware that a second tender will be called. With respect to the honourable senator's second question, I believe that it would be only fair and reasonable to have an open tender on the second requirement as well.

Senator Forrestall: Is the minister suggesting that the government is not giving consideration to commonality?

Senator Graham: It is my understanding that, while the tendering process is open and transparent, the winning bidder on the first contract would not necessarily be the winning bidder on the second contract. That would be unreasonable and unfair.

• (1410)

SEARCH AND RESCUE HELICOPTER REPLACEMENT PROGRAM—
URGENCY IN REPLACING SEA KING HELICOPTER—
GOVERNMENT POSITION

Hon. J. Michael Forrestall: Honourable senators, we also know that the Sea King helicopters have been grounded since last Friday at around midnight. With any luck, some of them will probably be getting back into the air today or tomorrow. The government cancelled the EH-101 in 1983, and we lost the opportunity to have a modern maritime helicopter. We are now facing costly maintenance problems and, most important, reliability problems.

In a letter dated October 3, the Minister of National Defence admitted — for the first time, I might add — that the maritime helicopter project staff were only then documenting requirements, and that the project to replace the Sea King had not even received preliminary project approval. So much for how long is "soon."

When will this government give project approval to replacing the Sea King helicopter so that the project office can actually move ahead with planning for a replacement?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, in answer to the second question, it is my understanding that as soon as the successful bidder is selected for the replacement of the search and rescue helicopter, the work on selecting an appropriate helicopter to replace the Sea King will be continued in what I might term a more aggressive manner. I understand that a lot of background work has already been done.

The Honourable Senator Forrestall is quite correct in drawing to our attention that, on Friday, the maintenance contractor identified a potential problem with the rotor assembly of the Sea King helicopter. It is my understanding that as of today, 24 of the helicopters have been inspected and cleared for flight duties. The remaining six will be checked between now and December 18.

Incidentally, I understand as well that, of the helicopters that have been inspected, only two required repairs.

Senator Forrestall: Honourable senators, I have a final supplementary question. On November 19, at page 370 of the *Debates of the Senate*, I put a question to the Leader of the Government in the Senate on the subject of the search and rescue helicopter project, in which I asked that the decision be based upon "operational capabilities and technical requirements." At that time, the Leader of the Government replied by saying, "Absolutely."

The forces have already chosen the EH-101 as the best helicopter for the job, based on their assessments. Therefore, I ask the Leader of the Government, as minister for Nova Scotia, where search and rescue personnel are based, will he stand by his word and now declare himself in favour of choosing the EH-101, and will he push this government to get on with what has turned out to be a very long overdue, and very costly, decision; a decision that has been put off for so long that it has allowed members of the Reform Party in the other place to fearmonger, and to call into question the safety of these helicopters, which is not really on the agenda?

Senator Graham: Honourable senators, I am not an expert on these things. One would have to rely upon the advice that one receives from those responsible. I would not be pushing one particular helicopter, or one company over another. However, it is only fair, if we are to have transparency in the whole system, that the helicopters be judged on their merits, and that each of the four companies who are tendering be given an equal opportunity.

Having said all of that, the final decision must remain with the government because the government carries the final responsibility.

Senator Forrestall: The government had done that, and now they have backed away from it.

NATIONAL UNITY

RECENT REMARKS OF PRIME MINISTER— GOVERNMENT POSITION

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, I have a question for the Leader of the Government in the Senate on the question of national unity. Newspapers across Canada are today reporting that the Prime Minister of Canada says he would negotiate the breakup of Canada.

Is it now the position or the policy of the Government of Canada that failure is an option?

Hon. B. Alasdair Graham (Leader of the Government): Never.

[*Translation*]

Hon. Jean-Claude Rivest: Honourable senators, yesterday the Prime Minister of Canada indicated his intention to negotiate after a referendum; he went on to state that a clear question was needed, and a strong majority. Why, instead of focussing its efforts on an in-depth renewal of Canadian federalism, as all Quebec premiers have been calling for since the early 1960s, has the Government of Canada settled for indirectly supporting the partitionist movement by asking the Supreme Court to rule on a question that is primarily a political one? If the Prime Minister of Canada is indicating his intention to negotiate sovereignty or the breakup of Canada, why then did he make the referral to the Supreme Court of Canada?

[*English*]

Senator Graham: Honourable senators, in the event of a very surprising turnaround and a "yes" vote in a referendum, the government would need to look closely at the process and the question before taking any action with respect to renewing the federation. I do not know of anyone who has worked harder at that than Prime Minister Chrétien.

[*Translation*]

Senator Rivest: Honourable senators, if the separation of Quebec is 5, 10, 30, 50 or 70 per cent illegal, and therefore illegal at all levels — and he has asked the Supreme Court to tell him so — why did he indicate yesterday in Quebec City that he was willing to negotiate? That is my question. Is an illegality negotiated according to the degree of illegality, or whether or not it is an illegality, period?

[*English*]

Hon. John Lynch-Staunton (Leader of the Opposition): Is it legal to separate by popular vote?

Senator Graham: I think it would be prudent for the government to prepare for all eventualities.

Hon. Gerry St. Germain: Honourable senators, I have a supplementary question to the Leader of the Government in the Senate. I heard him say that the Prime Minister would never negotiate, and yet the Prime Minister has said he will negotiate. Did I hear that correctly?

I ask for clarification because I am sure Canadians will wonder how the Leader of the Government, as a member of cabinet, could stand and speak on behalf of the government and say, "We will never negotiate," while the Prime Minister is saying in Quebec that he is prepared to negotiate.

So that all Canadians know, what is the position of the government?

Senator Graham: Honourable senators, I suppose I would be speaking on a personal basis, and I accept full responsibility for that. I could never contemplate the breakup of our country, or the separation of the beautiful province of Quebec.

SOLICITOR GENERAL

COMMUNITY SERVICES FOR OFFENDERS—ELIGIBILITY OF NON-VIOLENT CRIMINALS—REQUEST FOR CLARIFICATION

Hon. Brenda M. Robertson: Honourable senators, my question concerns a report about a recent public forum on crime attended by the Solicitor General in Fredericton. At that conference, the Solicitor General is reported to have said that offenders, other than violent, dangerous offenders, should have services in communities so that they do not need to serve their sentences in expensive institutions.

I think honourable senators would agree that many offenders — and communities — would be better served if offenders are kept under supervision in their communities. However, the rapidly changing nature of crime raises serious questions about releasing certain types of non-violent criminals to community-based programs.

I would ask the Leader of the Government in the Senate to seek clarification from his colleague on the types of criminals for whom he believes jail is not the answer.

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I shall seek that answer. I am aware there has been discussion among legal authorities and in some sections of the Canadian Bar Association on the topic of restorative justice. I do not know if the Solicitor General was alluding to restorative justice or the elements of a new program for restorative justice, but I shall seek a response for my honourable friend.

• (1420)

Senator Robertson: Honourable senators, my supplementary question concerns technological crime. We all know that criminal activity on the information highway costs elderly Canadians millions yearly through various scams. For example, credit card fraud costs $80 million annually. There are other types of non-violent crimes, such as hate crimes. If jail time is not the way to go for these non-violent criminals, what community-based programs does my honourable friend believe are the alternatives for sophisticated, technological thugs who could conceivably do much harm to individuals and society through the misuse of today's information-based technologies? I cannot see them helping at community centres. I am not sure how the Solicitor General classifies these crimes, but the people of New Brunswick would like to know.

Senator Graham: As usual, my honourable friend has put her finger on a very important problem, one that is evolving and becoming more apparent. I would not want to attempt to answer today because any answer would be inadequate. However, I shall seek further information from the minister responsible.

ENERGY

POSSIBLE POSTPONEMENT OF FINAL ENVIRONMENTAL APPROVAL AND LICENCE FOR SABLE ISLAND GAS PROJECTS PENDING COURT OF APPEAL HEARING— GOVERNMENT POSITION

Hon. Jean-Maurice Simard: Honourable senators, my question is for the Leader of the Government in the Senate.

The Sable Island offshore energy proponents — Mobile Oil Canada Properties, Shell Canada Limited, Imperial Oil Resources Limited, and Nova Scotia Resources Limited — issued a statement in Halifax on Friday or Saturday congratulating the federal government, the Liberal government in Nova Scotia and, no doubt, the New Brunswick Liberal government for announcing a decision as far as the environmental approvals are concerned. Their decision confirmed the approval of the National Energy Board. We know that two other bidders — TransMaritime Pipeline and North Atlantic Pipeline Partners — have appealed to the Federal Court of Canada. They will be in court tomorrow. We know that this project is not supported by everyone in New Brunswick.

We hear the rumour that the federal government is thinking of announcing the final approval of this project, while denying the other bidders the chance to have their project studied, approved and considered. I suspect that the Canadian government will use Parliament's Christmas break to announce their final approval.

Are these rumours true? Will the government allow the appeal court to hear the case and postpone the decision on final approval until next summer?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I do not know about any postponement. The companies affected have every right to appeal to the courts of the land.

The National Energy Board released its decision on the Maritimes Pipeline & Northeast Pipeline on December 3, 1997, which, according to the National Energy Board Act, is subject to the approval of the Government of Canada.

The other proposals in question, including the TransMaritime Pipeline project, which was submitted to the NEB on August 29, 1997, will receive full and fair consideration through regulatory review of the NEB. As my honourable friend has said, they are considering taking action through the courts as well.

Senator Simard: Honourable senators, I do not think I can accept the response of the Leader of the Government in the Senate. We have just heard from the leader that the National Energy Board and the federal government will hear the case and follow the regular process of approval. However, if the federal government gives final approval within a month or two months, we know that it will be too late. Mobile Oil and its partners will have started building their pipeline, with no lateral pipelines in northern New Brunswick, among other things. How can you suggest that justice will be done if the government gives its final approval in the next two months?

Senator Graham: It is my understanding, honourable senators, that a hearing is scheduled for December 9, 1997, in the Federal Court of Canada. Both parties will be seeking a stay. We will await the outcome of that hearing.

Hon. Pierre Claude Nolin: Honourable senators, I am sure the federal government wants to give a fair hearing to all parties on the pipeline project. Am I right?

Senator Graham : Yes.

Senator Nolin: If, in court, evidence is presented to demonstrate that the National Energy Board has not taken full consideration of all the options and all the other projects, will the government ensure that those projects will be examined according to their rights?

Senator Graham: Honourable senators, it would be imprudent of me to attempt to pre-judge what any court might say and the response the government might give to such a ruling.

Hon. John Buchanan: Honourable senators, I do not want to enter into a great discussion about this issue at the present time. However, I have followed the Fournier panel proceedings closely. There is no doubt in my mind that both of the other proponents had ample opportunity to be heard.

Senator Simard: What is your question, Senator Buchanan?

Senator Buchanan: I will come to it momentarily.

• (1430)

The fact of the matter is that advertisements appeared in newspapers in New Brunswick and Nova Scotia back in February of 1997, indicating that the Fournier panel was to start its hearings and inviting those with proposals of any kind, vis-à-vis the pipeline situation, to come forward and place them before the panel, and they would be given an ample hearing. Maritimes & Northeast Pipeline Management Ltd. did appear promptly before the Fournier panel. However, it was not until sometime in the summer that the proposal was put before the commission.

Senator Simard: What is the question?

Senator Buchanan: Do you not agree that they had every opportunity to be heard, and that they were late in submitting their proposal? That is to say, they could have filed their proposal much earlier than they did?

Senator Graham: Honourable senators, I wish to thank the honourable senator for his comment.

SABLE ISLAND GAS PROJECTS—POSSIBLE FORMATION OF SENATE SUBCOMMITTEE TO STUDY GRANTING OF PIPELINE LICENCE—GOVERNMENT POSITION

Hon. Jean-Maurice Simard: Honourable senators, I have a supplementary question. Will the Leader of the Government in the Senate consider giving approval to forming a subcommittee of the Energy, the Environment and Natural Resources Committee or other committees to study the gas pipeline issues? Will he consider it?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, the National Energy Board is a respected, arm's length, quasi-judicial body. It has made a ruling on the proposal formally before it.

Senator Buchanan is quite right in the chronology of events as he outlined them. The other proposals will receive full and fair consideration through regulatory review of the National Energy Board. The most important factors for any successful pipeline project are economic viability and acceptance in the marketplace.

As I indicated, a Federal Court hearing is scheduled for December 9. I suggest that we await the outcome of that hearing.

Senator Simard: In other words, tune in tomorrow!

CANADA-UNITED STATES RELATIONS

IMPLEMENTATION OF LAW REQUIRING VISAS FOR CANADIANS TO ENTER UNITED STATES—POSSIBILITY OF EXEMPTION—GOVERNMENT POSITION

Hon. Norman K. Atkins: Honourable senators, although the American law which allows border immigration guards to turn back Canadian visitors or prohibit them from entering the United States for five years does not come into effect until September 1998, the American government has begun pilot projects to test its effectiveness. These pilot projects have resulted in some Canadians being arbitrarily stopped, detained and prohibited from entering the United States for a period of five years.

Given the fact that Canada did nothing to prevent this legislation from coming into effect, does the government intend now to bring this situation to the attention of the United States government and to request that this legislation not be implemented?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I do not know the nature of the specific request, but there have been consultations between both countries, and representations have been made on behalf of Canadians.

Senator Atkins: Will the Canadian ambassador, who seems to have slept through the passage of this legislation by Congress, join Michigan Senator Spencer Abraham in requesting that Canada to be exempted from the application of this law?

Senator Graham: Yes, honourable senators. As I indicated, the Government of Canada has made appropriate representations, and I will attempt to provide further information for my honourable friend.

IMMIGRATION

EFFICACY OF TRACKING SYSTEM ON UNSUCCESSFUL REFUGEE CLAIMANTS—GOVERNMENT POSITION

Hon. Donald H. Oliver: Honourable senators, I have a question again on the issue of immigration and the Auditor General's report.

You will recall that the Auditor General's report has highlighted the latest refugee boondoggle, noting that the department can only confirm that 22 per cent of those people who have been denied refugee status have actually left the country. Clearly, this government has lost control of the situation. For example, some reports indicate that some failed claimants could be terrorists, murderers or other criminals. This situation puts Canadians at risk.

What will the government do to ensure that those ordered to leave this country actually do leave the country?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, the government is taking all necessary steps, but I shall attempt to provide further information for the honourable senator.

We welcome the Auditor General bringing this important matter to our attention because Canada remains committed to offering protection and assistance to the world's legitimate refugees, while protecting the health and safety of Canadians.

The thrust of the Attorney General's recommendations were in keeping with last year's assessment by the Minister of Citizenship and Immigration. She announced the creation of the Legislative Review Advisory Group to carry out an in-depth review. I hope that this review will provide further recommendations and stricter measures, as suggested by my honourable friend.

COLLECTION OF SURETIES POSTED FOR UNSUCCESSFUL REFUGEE CLAIMANTS REMAINING ILLEGALLY IN CANADA—GOVERNMENT POSITION

Hon. Donald H. Oliver: Honourable senators, as the Leader of the Government in the Senate knows, it has been the practice of the immigration department to insist on the posting of bonds for these refugee claimants who the department believes will not show up for a hearing.

In light of the fact that 78 per cent of those ordered out of the country cannot be found, can the government tell me how many of these individuals were bonded, and how much has been collected by the department from forfeited bonds?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, as my honourable friend might suspect, I do not have those details at my fingertips. However, I will attempt to obtain them as soon as possible.

Senator Oliver: Many of those bonds have been posted by church groups. Could the Leader of the Government in the Senate also find out whether the government has been collecting from those church groups that have actually posted bonds?

Senator Graham: Yes.

ORDERS OF THE DAY

APPROPRIATION BILL NO. 2, 1997-98

THIRD READING

Hon. Anne C. Cools moved the third 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.

Motion agreed to and bill read third time and passed.

CUSTOMS TARIFF

THIRD READING

Hon. Michael Kirby moved the third reading of Bill C-11, 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.

Motion agreed to and bill read third time and passed.

CANADA PENSION PLAN INVESTMENT BOARD BILL

SECOND READING—DEBATE ADJOURNED

Hon. Michael Kirby moved the second reading of 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.

He said: Honourable senators, I appreciate the opportunity to address this chamber on second reading of Bill C-2, which contains measures to reform the Canada Pension Plan.

• (1440)

This legislation is relevant to all Canadians. We all have a stake in the future of the key component of our retirement income system. As honourable senators know, Canada's retirement income system is one of the best in the world. It consists of three pillars. The first is Old Age Security and the Guaranteed Income Supplement, the basic public pension benefit that provides a guaranteed income to all seniors, which will, in the future, be transformed into the new Seniors Benefit. The second pillar is private retirement savings plans, known as PRSPs, and registered retirement savings plans, known as RRSPs. The third pillar is the Canada Pension Plan, the subject of Bill C-2, which we are starting to debate today.

Often described as one of the most important social initiatives ever undertaken in this country, the Canada Pension Plan provides working Canadians and their families with retirement and financial help in the event of death or serious disability. However, as we all know from what we have read in the newspapers in the last couple of years, all is not well with the Canada Pension Plan. The CPP was designed in 1966 as a pay-as-you-go program, an approach that made sense given the economic conditions that prevailed in 1966. In 1966, there were eight working-age people in Canada for every retired person. Today, there are only five working-age people for every retired person and, in 30 years, in 2027, there will be only three working-age people for every retired person.

Canadians are also living an average of three years longer than they were when the CPP was started in 1966. This means that more resources than ever are being drawn out of the CPP; much more than was anticipated when the plan was introduced 31 years ago.

Given the statistics just cited, it is clear that this trend will only get worse. By the year 2030, for example, it is expected that Canadians will live, on average, 4.5 years longer than they do now. This means that by the year 2030, Canadians will be collecting CPP pensions for an average of 30 years. That is almost one-third longer than when the CPP began. Not only are seniors living longer, but there will be many more of them than there were when the plan was begun in 1966. Today, there are about 3.7 million Canadian seniors. By 2030, there will be 8.8 million Canadian seniors, more than two and a half times the number we have today.

Another challenge for the Canada Pension Plan is that the economic and demographic environment in Canada today is substantially different than it was 30 years ago. In 1966, the CPP contribution rate was expected to increase only to 5.5 per cent by the year 2030, but wage and work force growth has slowed down and real interest rates have risen, thus jeopardizing the financial underpinnings of the CPP.

According to the chief actuary, the scheduled increase in the CPP contribution rate to 10.2 per cent by 2016 would still not be enough to sustain the CPP. In fact, the chief actuary has said that rates would have to soar to 14.2 per cent by 2030 to meet escalating costs if no changes were made to the plan.

Honourable senators, increasing the contribution rate to 14.2 per cent would mean that future generations would face a 140-per-cent increase in Canada Pension Plan contributions. Clearly, such an increase is not acceptable. The government must take action now in order to avoid imposing a crushing financial burden on future generations. Doing nothing — putting off the decision to another day, passing the buck — would be the easiest thing to do. It would also be the wrong thing to do. Nothing could be more irresponsible.

The federal government, along with supporting provinces, to their credit, are facing up to their responsibilities and taking action now to avoid imposing a crushing burden on future generations. Together with the provinces, the federal government is proposing changes that will make the Canadian Pension Plan sustainable and healthy, not just for us but for our children and grandchildren.

Consultation has always been a top priority of the government when it comes to significant changes in fiscal public policy. The government listens, it discusses, and then it proposes action. Together with the provinces, the federal government released a public consultations document on the CPP nearly two years ago, in February, 1996. Then the consultation panel travelled to every province and territory through the summer and fall of 1996. A full report on the consultations process was released early last year.

During the 1996 consultations, Canadians told the federal government and the provincial governments that they definitely wanted to be able to count on the CPP when they reached retirement age. Canadians told the consultation process that they wanted the CPP fixed now and fixed correctly; not left to drift, and not privatized or scrapped. They told the federal and provincial governments involved in the CPP to fix it right and fix it now without passing on an insupportable cost to future generations.

The message from Canadians to their federal and provincial governments was clear: preserve the CPP by strengthening its financing, improving its investment practices and moderating the growing cost of benefits. Bill C-2 reflects what Canadians told their governments during the public consultations a year and a half ago. Last February's federal-provincial agreement paved the way for this bill. Federal and provincial ministers agreed on a carefully balanced three-part approach to restore the fiscal sustainability of the Canada Pension Plan. They agreed to make the plan fairer and more affordable for future generations by doing three things.

First, the federal and provincial governments agreed to move to fuller funding by accelerating contribution rate increases now, so that they will remain below 10 per cent for future generations. Second, they agreed to improve the rate of return on the CPP fund by investing it prudently in a diversified portfolio of securities at arm's length from governments. Third, the federal and provincial governments agreed to slowing the growth in costs of the CPP by tightening the administration of benefits and changing the way some are calculated. I shall comment on each of those three points in turn.

First, with respect to strengthening the plan's financing, because pay-as-you-go financing — or essentially taking the CPP payments out of the government's annual revenue — is simply no longer adequate, the CPP will move to fuller funding to build a much larger reserve fund. A larger fund earning a higher rate of return is what is needed to help pay for the escalating costs when the baby boomers begin to retire early in the next century.

To place the plan on a more fiscally responsible base, contribution rates will rise gradually over the next six years to 9.9 per cent of contributory earnings, and then remain steady. This will spread the costs of the CPP evenly and fairly across all generations. Remember, if nothing were done, CPP rates would have to jump to 14.2 per cent by the year 2030. The 9.9 per cent rate is expected to be enough to sustain the CPP into the indefinite future with no further rate increases.

• (1450)

This rate increase will pay for an individual's own benefits plus a fair share of the burden of the shortfall between the assets currently in the plan and the value of all the promises of the plan, what in pension language is called the "unfunded liability."

The second step in the process agreed to by the federal government and the provinces was what I referred to a moment ago as a new investment policy. This new investment policy is based on the following: The increase in the size of the reserve fund makes it more important than ever to adopt a new investment policy to improve the way in which CPP funds are invested, and to secure the best possible return for contributors and beneficiaries.

The new CPP investment policy proposed in Bill C-2 reflects the expressed desires of Canadians as stated during the federal-provincial consultation process in 1996. During these public consultations, Canadians said they wanted the CPP to be invested like other private pension funds. Based on this advice, federal and provincial finance ministers adopted the following "guiding principle" of a new CPP investment policy.

The guiding principle states that the CPP funds must be invested in the best interests of plan members, and maintain a proper balance between returns and investment risks. It states also that governance structures must be created to ensure sound fund management. Instead of being lent to provinces at preferential rates, as CPP funds are now, in the future CPP funds will be prudently invested in a diversified portfolio of securities in the best interests of plan members, just as other, private sector pension funds are.

The CPP Investment Board will hire financial professionals to invest CPP funds at arm's length from governments. The key to carrying this out effectively and, indeed, the core of the investment policy provisions in Bill C-2, is to establish the appropriate management structures for the investment fund.

Pension fund experts told the Finance Committee in the House of Commons again and again that the key to good investment practices and good investment results is good management structures. They also told the committee that the provisions in Bill C-2 are extremely sound.

The CPP Investment Board will act in the best interests of plan members, maintaining a proper balance between returns and investment risks. In order to do this, the Investment Board needs independence from government, and Bill C-2 assures this independence.

The board will operate under the same rules that govern other private and public sector pension funds. It will be able to hire qualified investment professionals to make day-to-day investment decisions. At the same time, the board will be accountable to plan members, to governments and to Canadians generally. The pension fund experts who appeared before the committee of the other place agreed that the accountability provisions of Bill C-2 are stringent, and on the leading edge of pension fund governance provisions.

I mentioned a moment ago that CPP funds are currently lent to the provinces at preferential rates. Under Bill C-2, provinces will continue to have some access to CPP funds, but at market rates, not preferential rates. In other words, the day when provinces could borrow funds from the CPP at below market rates will come to an end with the legislation before us.

As a transition measure, the provinces will have the option of rolling over their existing CPP borrowings at maturity, and at their own provincial market rates for another 20-year term. For the first three years following the implementation of this legislation, the provinces will have access to 50 per cent of the new CPP funds that the board chooses to invest in bonds. After the end of the third year, however, new CPP funds offered to the provinces at market rates will be in line with the proportion of provincial bonds held in pension funds in general in Canada, thus ensuring that the fund's investment in provincial securities is consistent with pension fund market practice.

I would like to point out that two amendments have been made to the auditing provisions of Bill C-2 since it was first introduced in the other place. The first amendment clarifies that the Auditor General has access to all information he considers necessary to conduct his audit of the consolidated financial statements of the CPP. The Auditor General will have access to any records, accounts, statements or other material which he believes to be appropriate. On the basis of this amendment, the Auditor General indicated in a letter to the chairman of the House of Commons Finance Committee that he is now satisfied with the audit provisions of Bill C-2.

The second amendment made in the other place requires that the CPP Investment Board be subject to a special examination at least once every six years. Although the legislation already provided for special examinations of the Investment Board by the Auditor General, it did not specify their frequency. These examinations will be aligned with every second triennial review of the CPP. In that way, if there are any problems with the fund, the finance ministers of the federal government and the provinces can deal with them during their regular reviews.

The third issue related to the CPP is the issue of stewardship and accountability. Another way of ensuring that the Canada Pension Plan is never again put at risk is to improve its stewardship and strengthen its public accountability. Under Bill C-2, federal provincial reviews will take place every three years, instead of every five years which has been the case historically.

Under Bill C-2, Canadians will begin receiving regular annual statements about their CPP pensions, just as soon as is feasible. Under Bill C-2, the CPP Investment Board will publish annual reports on the performance of the fund and table them in Parliament. In addition, the CPP Investment Board will hold public meetings at least every two years in each and every participating province.

The third pillar involves changes to benefits and their administration. Complementing the financing and investment policy changes are some changes to benefits. During the public consultations, Canadians told their governments to go easy on changes to benefits; and, indeed, this federal-provincial agreement does exactly that.

In their effort to prevent the contribution rate from rising to 14.2 per cent by the year 2030, the federal and provincial governments have ensured that some 75 per cent of the impact of the changes to the CPP is on the financing side, and only 25 per cent is on the benefits side. Once again, honourable senators, this reflects what Canadians told their governments during the round of national public consultations in 1996.

However, anyone currently receiving a CPP retirement pension, a disability benefit, a survivor's benefit or combined survivor and disability benefit, will not see their current benefits affected by this legislation. This legislation contains no element of retroactivity with respect to people who are currently receiving CPP benefits in any form. Persons over age 65 as of December 31 of this year who elect to start CPP retirement pensions after that date will not see these pensions affected.

Further, all benefits under the CPP, except the one-time death benefit, will remain fully indexed to inflation. In addition, the ages of retirement, the ages at which one can begin to collect benefits — the so-called early age, normal age or late age — will remain unchanged under this bill.

What will change when this bill goes into effect is the following: First, retirement pensions will now be based on the average of maximum pensionable earnings in the last five years prior to retirement, instead of the last three years.

Second, to be eligible for disability benefits, workers must have made CPP contributions in four of the last six years prior to becoming disabled.

Third, retirement pensions for the disabled will be based on maximum pensionable earnings at the time of disability, and then fully price-indexed to age 65.

• (1500)

Fourth, there will be limits on combining survivor and disability benefits, and survivor and retirement benefits.

Finally, the death benefit will equal six months of retirement benefits up to a maximum of $2,500, as opposed to the maximum of $3,580, which it is now.

I submit that these proposed benefit changes are moderate and balanced. No one group has been singled out or forced to shoulder a hardship.

Honourable senators, that outlines the basic changes to the CPP contained in Bill C-2. It should be clear, however, that there are several other outstanding issues which are in need of further review. While the proposed changes will restore the sustainability of the Canada Pension Plan, CPP reform will not end with this legislation. The federal and provincial governments will be considering some other issues over the course of the next several years. These issues were not included in Bill C-2 for a variety of reasons — either because they went beyond the scope of the latest CPP statutory review or because they were raised too late in the review, or after the public consultations were complete, which would make it impossible for them to be adequately analyzed and considered.

These issues, which are subject to further study and review, will be examined over the next few years and include the following: Ensuring that survivor benefits reflect changing realities and the needs of today's families; the mandatory splitting of pension credits between spouses; the work-to-retirement transition, including the possibility of providing partial CPP benefits to Canadians wanting to make a gradual transition to retirement; and the question of people receiving retirement income and employment insurance benefits at the same time. However, I emphasize to all members of this chamber that no changes will be considered which would increase the steady-state rate of 9.9 per cent of contributory earnings.

Before closing, honourable senators, I wish to set the record straight about some of the charges and myths that have been spread with respect to Bill C-2. Some critics have had trouble distinguishing between the CPP contributions and payroll taxes. In fact, some have trouble distinguishing between CPP contributions and taxes in general. Still others think there is a connection between CPP contributions and Employment Insurance premiums. Let me be clear on certain facts.

CPP contributions are not payroll taxes, any more than employers' and employees' contributions to their private sector pension plans are taxes. In fact, CPP contributions are not taxes at all. They are savings toward pensions, in this case a pension plan administered and provided through the government rather than through a private pension plan. CPP contributions will go into a separate fund, not into government coffers, and they will be invested through the CPP Investment Board, just as other pension plans invest their funds. Canadians view their CPP contributions as retirement savings, not as taxes. As for the Canada Pension Plan and Employment Insurance, these are clearly totally different and separate programs.

Then, honourable senators, there are those, particularly in the Reform Party, who propose scrapping the CPP and moving to mandatory RRSPs. RRSPs, of course, are important, but they cannot replace public pensions. Canadians want the security that is provided by the CPP as a public, government-backed plan. In contrast, RRSP benefits depend on how much each individual's investments can earn, and, indeed, how much each individual is able to put aside each year into an RRSP. With the CPP, earnings on investments are used to pay for uniform benefits which are reliable. They are not dependent on the vagaries of the marketplace.

Canadians told their governments during the public consultations in 1996 that they wanted a CPP-type benefit which shares the risk and guarantees the amount of the pension. In other words, Canadians want the security provided by the CPP as a public, government-backed plan. They do not want all their retirement savings dependent upon the fluctuations of mutual funds or the stock market.

Furthermore, proponents of mandatory RRSPs have been unable to explain adequately how they would pay for the CPP's $600 billion in outstanding obligations; obligations to today's seniors who are already receiving pensions, and to those working Canadians expecting to collect CPP when they retire. When supporters of mandatory RRSPs replacing the CPP are asked what they would do with the current shortfall in the CPP, they have been unable to provide an answer.

Honourable senators, passing Bill C-2 will make Canada one of the first countries in the world to ensure the sustainability of its public pensions indefinitely into the next century. For over 30 years, the CPP has been a key part of the retirement plans of every Canadian. It also meets the retirement needs of some of the most vulnerable in our society. Bill C-2 ensures that the Canada Pension Plan will not only continue to be there but also that it will continue to serve the interests of all Canadians. I urge my honourable colleagues to support this bill to help secure this pillar of Canada's retirement income system, and to ensure the passage of Bill C-2 so that, in fact, the Canada Pension Plan will be financially solvent far into the indefinite future.

Hon. Gerry St. Germain: Honourable senators, I have a question for Senator Kirby. Did I hear him correctly when he said that the balance will be there, and that our young generation will not bear the brunt of this pension plan change on their shoulders? He gave statistics about eight, five, and three people in the work force as compared to those on pensions. We have left our young people a $600-billion debt, an environment that is under severe stress, and infrastructures that are being dismantled for local authorities. I am not saying that I disagree with all of these things, but I do find it surprising to hear the government sponsor of this bill say that the younger generation will not pay for this change. They must shoulder the brunt of these costs if all of us quit working in favour of retirement.

Who was consulted? I am certain that the major players such as the National Council on the Status of Women were consulted, but where were the youth who will pay the burden? Were they consulted in any way, shape or form? Would the honourable senator inform the Senate as to how they were consulted, when they were consulted, and if they were consulted?

Hon. Terry Stratton: They used a 1-800 number.

Senator Kirby: It is difficult to know which of those dozen questions Senator St. Germain would like me to answer, so I will try to answer them all.

If I can paraphrase, Senator St. Germain raised two separate topics, the first of which was what assurance we have that the 9.9-per-cent funding formula will ensure that the fund remains fiscally stable into the indefinite future. The response is that the actuarial analysis done by the chief actuary and the demographic projections done by Statistics Canada have been teamed up to show that at an annual contribution rate of 9.9 per cent from working Canadians, the fund will be fiscally balanced. It will not have future shortfalls nor an actuarial shortage off into the indefinite future. The numbers were actually run out for 50 years, so they go almost to the year 2050, and that would cover the vast majority of Canadians who are alive today.

• (1510)

The short answer to the honourable senator's question can be found in a piece of statistical analysis done by Statistics Canada and the chief actuary, which shows the stability of the plan. Whether a pension plan is structured for a private sector company or a public group, such as teachers or public servants, the analysis is done in the same way, demographically and actuarially.

In his second question the honourable senator asked who was consulted. I was not part of the consultation process in 1996. However, I would be happy to obtain a list of the meetings and the witnesses. I am sure that exists in the report of the committee that conducted these consultations. I do know it was an extensive consultation process. The consultation process involved federal people and provincial representatives from coast to coast. It was a detailed, national, consensus-seeking exercise. However, if the honourable senator wants the exact details of who was consulted and when, I do not have the details here. I shall be happy to try to obtain them.

Senator St. Germain: Honourable senators, my question was not really about actuarial aspects but with regard to balance. Who will bear the brunt of these pensions? It will be our younger generations, the people who come into the workforce now or in the future.

I am concerned when the government says there is balance. There is no balance. We are leaving future tax-paying Canadians with a $600-billion debt, and with a litany of other problems, and now we are asking them to pay 9.9 per cent of their incomes for their pensions. As to whether or not there will be sufficient funds, I am sure that Statistics Canada will be able to substantiate its figures. This is a sizeable increase in donations to our pension plan.

My next question relates to the fund management committee. One of the things that has always bothered me in our process, and it has been there since I came to Ottawa, is the fact that we have no method of scrutinizing these appointments. Similar to the Supreme Court of Canada appointments and the Bank of Canada appointments, these appointments will be critical. These appointments should not be based on partisanship and conferred without scrutiny.

Would the government consider an amendment to the legislation, that these appointments be subject to scrutiny by a Senate committee, perhaps by the Standing Senate Committee on National Finance, but preferably by the Standing Senate Committee on Banking, Trade and Commerce?

Senator Kirby: Honourable senators, there were two separate questions.

First, if Senator St.Germain will pardon me for saying so, he has mixed up two different concepts. There is no question that I said the fund is actuarially in the hole by $600 billion. However, the changes being proposed to increase contribution rates will not, in fact, pass that burden on to future generations, but will start dealing precisely with that burden before future generations get stuck with it entirely. The whole purpose of accelerating the period of time during which contribution rates will increase, that is, increasing contribution rates sooner rather than later, is precisely to avoid the problem of passing the burden on to future generations.

As I pointed out, at the 9.9-per-cent contribution level, it will then be stabilized for future generations. If you look at the history of the CPP, you realize that governments of both political persuasions in this chamber have contributed to allowing the fund to get $600 billion in debt. Therefore, we both have some responsibility for dealing with it. The fact of the matter is that this plan is designed to deal with the debt precisely so that debt will not be pushed on to future generations.

Regarding the honourable senator's second question on the nature of the approval process for the board members, I have not discussed that issue with the government. My personal view with respect to appointments is that there is much to be said for some kind of review process vis-à-vis board members, appointees or positions in general. I would be happy to undertake a discussion of that issue with the government. I would be happy to do that in the next couple of days and to give the honourable senator some feedback on it as soon as I can.

My personal position, not only with respect to these appointments, but appointments in general, has always been in favour of more openness and a review process. Whether or not it is achievable through an amendment to this legislation, or whether it should be looked at in a broader context, I am not clear. However, I have no difficulty with the nature of the question.

Senator St. Germain: Honourable senators, for clarification, when I referred to the $600 billion, I was referring to the debt that we have in place now. What is owing as a result of pensions that are forthcoming to our citizens is another figure. I am trying to portray the burden that we are placing on the shoulders of our young people. They will bear the brunt of it. Someone has to pay it. If they are the ones working, they will be the ones paying it.

Senator Kirby: The honourable senator and I are not very far apart, the difference being the tense, whether it is past or present. He continues to refer to the $600-billion debt as existing in the future. In fact, that problem is here today. It is a problem caused by governments of both parties.

I happen to agree with the senator. The CPP should have been put on a more stable financial footing, as any other pension plan would have been. It should have been done years ago, as soon as it started to get into an actuarial deficit problem. I am totally sympathetic to that argument.

The question before federal and provincial finance ministers, when they met on this subject last February, was would they simply continue to let the actuarially unfunded liability increase, or would they finally begin to deal with it, recognizing that the $600 billion would become $700 billion within a few short years. At some point, either pensions had to stop or future generations would have been faced, as I said earlier, with 14 or 15 per cent contributory rates.

I agree that there is a colossal problem now. Essentially, what this bill is designed to do is to deal with this problem before it gets worse without absolving either of the parties who governed this country during the period in question. Frankly, the problem should have been dealt with years ago.

Hon. David Tkachuk: Honourable senators, honourable Senator Kirby mentioned that the provinces will not be receiving a favourable interest rate in their borrowings in the future, but they will have a piece of the pie.

Later on, the senator said something interesting on which I would like clarification. As there will be collections in 1997, 1998, 1990 and the year 2000, is my understanding correct that, during this time, the provinces will receive a favourable rate of interest in that the competitive rates will not take effect on their borrowings until three years from now?

Senator Kirby: I will be happy to check on that. Historically, provincial governments have been able to borrow from the CPP at cheaper rates than on the open market. The transition measure does two things: First, for the next three years, 50 per cent of the new CPP funds will be available for borrowing by the provinces. However, it is my understanding that rates on that money during that three-year period would be what I would call the existing provincial government rate — that is to say, the rate the province would pay if it was borrowing in the open market. I would be happy to confirm that.

• (1520)

You are asking whether that is right, or whether the preferential rate exists for another three years. My understanding is that we move to the provincial open-market rate starting when the legislation goes into effect. Your understanding is that the preferential rate continues for three years. I believe I am right, but I may not be. I will check on it, and get back to you.

Senator Tkachuk: Senator St. Germain raised an interesting question, and we do not have an answer with respect to the question I asked earlier.

Since this is a very complicated bill, would my honourable friend consider the matter of the committee travelling next week so that the people of Canada can have a say with respect to what is in this bill?

Senator Kirby: As my honourable friend will acknowledge, he and I had a number of discussions on this question. As well, I understand there was discussion on this subject between the deputy leaders of both parties.

This is important legislation, representing an agreement between nine provinces and the federal government. The desire is to bring this legislation into effect on January 1, 1998. Given the current plan to have this chamber rise at the end of next week, the fact that not a huge number of witnesses indicated an interest in testifying before the committee, and the extensive hearings that took place across the country in 1996, it seemed the expeditious thing to do was to limit our hearings to Ottawa.

Hon. Norman K. Atkins: Honourable senators, my honourable friend referred to an actuarial analysis over a 50-year period. Does he seriously have confidence in that analysis? In 1966, I assume there was an actuarial analysis to reflect the number of years on the CPP, but look at what happened. How confident is my honourable friend that these numbers will reflect reality?

Senator Kirby: Honourable senators, for someone who was trained as a mathematician and who spent two summers working as an actuarial student, that is a tricky question.

With respect to the analysis of pension plans other than the CPP — pension plans for major, large employers — it is my personal view that the science of actuarial analysis has improved enormously in the last 40 years. Therefore, I have more confidence in it than the forecast made in 1966. Do I think it is 100 per cent fool-proof? Obviously not. The nature of statistics is that there is always the classic 19-times-out-of-20 problem.

Out of personal curiosity, I looked at some of the assumptions made and compared them to the assumptions made by some of the other, very large pension plans across the country. The actuarial assumptions used in the analysis of the CPP have been more cautious and more conservative than those typically used in private sector plans.

The answer to your question, senator, is yes, I have a great deal of confidence in it. Do I think there is a possibility that things could be different in the future? Obviously they could be, but I would have more confidence now than in the initial forecast done in 1966, partly due to the fact that the demographic information Statistics Canada had in 1996 was much less sophisticated than the information they have today.

Senator Atkins: Would my honourable friend agree that any actuarial analysis would be more accurate if it were for a shorter period than 50 years?

Senator Kirby: There is no question about that. Yet, if you look at the studies done with respect to the CPP, there is no question that the pattern of changed contribution rates absolutely ensures that the plan is solid over 30 years or 35 years. Those people are already living, so the forecast becomes easier. The actuarial uncertainty, if you will, or the risk, increases as you go out in time. However, the numbers in the current plan are very solid through the year 2030, which is essentially 30 years from now.

On motion of Senator Tkachuk, debate adjourned.

[*Translation*]

CRIMINAL CODE
INTERPRETATION ACT

BILL TO AMEND—SECOND READING—
MOTION IN AMENDMENT—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, An Act 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. Gérald-A. Beaudoin: Honourable senators, a few weeks after giving its decision in *Feeney*, the Supreme Court agreed to stay temporarily the effects of this decision for a period of six months — from May 22 to November 22 — at the request of the Attorney General of British Columbia. The Court agreed to an extension to December 19, 1997. I will say, in passing, that this action by the Supreme Court of Canada in no way impinges on the privileges and powers of Parliament.

[*English*]

Senator Cools made an amendment, and the amendment was ruled in order. I wish to speak against this amendment.

[*Translation*]

The purpose of Bill C-16 is to amend the Criminal Code so as to require peace officers to obtain a warrant before entering a dwelling-house and arresting a suspect.

A peace officer may request, in person or by other means of telecommunication, that a warrant be issued authorizing him to enter a private residence in order to arrest an individual, if he has reasonable grounds to believe that the individual sought is inside. The identity of this individual must be known. A justice may issue a warrant in either of the following cases:

> if he is satisfied that a warrant to arrest the individual exists and if there are reasonable grounds to believe that the person is present in the dwelling-house; or
>
> if he is satisfied that there are reasonable grounds to arrest the individual and to believe that he is present in the dwelling-house.

By way of exception, Bill C-16 allows peace officers to enter a dwelling-house without a warrant in exigent circumstances. These circumstances are defined as follows:

> there are reasonable grounds to believe that it is necessary to enter the dwelling-house so as not to expose an individual to imminent bodily harm or death;
>
> there are reasonable grounds to believe that it is necessary to enter the dwelling-house in order to prevent the imminent loss or imminent destruction of evidence.

By making an exception based on the notion of exigent circumstances, the lawmaker is taking advantage of the grey area left over from *Feeney*. The majority of judges on the Supreme Court purposely refused to rule on the question of whether exigent circumstances would exempt peace officers from the requirement of obtaining a warrant before entering a dwelling-house. But neither did it reject this potential exception.

The same reasoning applies to the exception based on the imminent destruction of evidence.

The majority on the Supreme Court also made the legal execution of a warrant conditional on "proper announcement." Bill C-16 makes specific provision for peace officers to enter a dwelling-house without prior announcement if there are reasonable grounds to believe that this would:

> a) expose the peace officer or any other person to imminent bodily harm or death;
>
> b) result in the imminent loss or imminent destruction of evidence relating to the commission of an indictable offence.

[*English*]

• (1530)

POINT OF ORDER

Hon. Anne C. Cools: Honourable senators, on a point of order, perhaps we could have some guidance from the Chair. Senator Beaudoin is not speaking to the question before us.

The Hon. the Speaker: Honourable Senators Cools, I am sorry, but the Honourable Senator Beaudoin has the floor.

Senator Cools: Yes, but I have risen on a point of order. I have been listening to Senator Beaudoin. If I am wrong, I will be happy to be told that I am wrong. However, as I listened to Senator Beaudoin, it occurred to me that, up to this moment, he has not been speaking to the question which is before us. The question which is before us is the reasoned amendment. Perhaps I am wrong, but it seems to me that Senator Beaudoin is speaking to the provisions of the bill. He can be opposed to the amendment but he still must stay on the question that is before the chamber, which is the motion in amendment.

[*Translation*]

Senator Beaudoin: Honourable senators, the amendment was deemed admissible. I am against this amendment because it is tantamount to hoisting the bill for a month of Sundays.

I believe it must be referred to the Committee on Legal and Constitutional Affairs for a thorough examination.

Senator Cools claims that this bill impinges on parliamentary privileges and powers. I do not agree.

In order to determine whether this bill ought to be accepted or rejected, the substance must be examined, and it must be referred to committee. I believe that this could be voted on immediately but, if people will just be patient for another two or three minutes, I will be done.

In my opinion, speaking of the substance of this bill is still pertinent to the debate. If we want a debate on the powers of Parliament, I am more than ready for that. It is so obvious that the powers of Parliament are in no way limited by the judgment

by the Supreme Court of Canada that I, for one, would be prepared to vote immediately on it. The amendment is in order, yes, but claiming that it impinges on the powers of Parliament is, to my mind, not properly justified in fact and in law.

It seems to me that, with that explanation, I could talk for a minute or two on this bill. If it is deemed *ultra vires* or out of order, I am certainly prepared to suggest a vote on the amendment. It strikes me as ill-advised at this stage, because our rights and privileges are not being invaded in any way. The Supreme Court is perfectly entitled to state whether or not an act is valid. It is perfectly entitled to state that peace officers, in a specific case, have or have not acted in accordance with the Canadian Charter of Rights and Freedoms. This bill must be reviewed in committee.

[*English*]

Senator Cools: On a point of order, I will not dwell on the issue, Your Honour, but I do believe that when you gave your ruling last week, you said that the amendment supersedes the original question.

I understand your sentiments, Senator Beaudoin; I understand very clearly where you stand. Basically, I was trying to invite you to give us the reasons, in a very clear and concise way, why you think the amendment is flawed. If you say you are against it, then you have an obligation to give us your reasons for that conclusion in a very clear and concise manner.

Basically, we all know you are a lawyer. You should know that simple declarations and conclusions are insufficient. What we need is your reasoning.

Senator Beaudoin: I do not think the Parliament of Canada is sitting in appeal from the Supreme Court of Canada. In my opinion, when the conduct of a policeman is at stake, when a legislative measure is at stake, there is absolutely no doubt in the world that the Supreme Court of the land may rule on the constitutionality of the matter. The fact that the Supreme Court has given us six months and an additional month to do what we want to do, and what we have the right to do, is certainly not against the Constitution of this country. They are not precluding us from doing something; they are helping us.

[*Translation*]

This is the first time in my life I have heard such reasoning.

The Supreme Court examines the constitutionality of laws based on either the distribution of powers or the Charter. Clearly, in this case, the basis is not the distribution of powers but the Charter.

In my opinion, the Supreme Court did what it had to do. You may disagree with its decision, but you must respect it. Parliament loses no power. It can introduce Bill C-16. It could have introduced another bill, but it put that one forward. And in my opinion, the bill is *prima facie* defensible, but I would like other experts to be consulted.

Your amendment suggests that the entire matter be stayed for six months. You are not satisfied with the bill and you say that the Supreme Court cannot rule. I can assure you that, on the contrary, the Supreme Court does have the right to rule while Parliament has the right to legislate. Whether you like it or not, it is an excellent system.

[*English*]

Senator Cools: Honourable senators, could I pose a question? Senator Beaudoin has told us "it is so clear and obvious." Perhaps he could tell us why it is so clear and obvious.

The honourable senator has also made certain statements about the Supreme Court of Canada's rights in the matter. Perhaps he could cite the authorities on that and, in particular, the specific sections of the Charter.

Senator Beaudoin: This is unbelievable! It is section 52 of the Constitution Act, 1982. The Constitution is the supreme law of the land. When there is a conflict, it is the Supreme Court that decides what the Constitution is. It has been that way for centuries. You may want to change that system, and good luck with that, but obviously the Supreme Court is applying the law of the land, and the first law of the land is the Constitution. The Constitution includes the division of powers and the Charter of Rights. You may like it or dislike it, but it is there.

• (1540)

Your thesis is that the Supreme Court is dictating to Parliament what to do. This is totally wrong. They are not doing that. On the contrary, the Supreme Court says to Parliament, "Go ahead, legislate. We give you six months, or seven months." In what way is the court invading our powers? They are invading nothing.

Senator Cools: Honourable senators, may I ask a question of Senator Beaudoin? He just cited section 52 of the Charter of Rights as the section which gives the Supreme Court of Canada its power.

Could Senator Beaudoin tell me where section 52 mentions the Supreme Court of Canada?

Senator Beaudoin: Honourable senators, I never mentioned the Charter of Rights; I said the Constitution. The Constitution includes the Charter of Rights. The Constitution includes the British North America Act and many other acts.

Section 52 says that the Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force and effect.

Who may declare a statute invalid? The Supreme Court of Canada.

I may lecture for a few hours, but I cannot change that. It is a beautiful system. The Supreme Court is the final interpreter of the Constitution. This does not mean that we are not supreme in our sphere. We are, subject to the Charter; subject to the division of powers.

In this case, the Supreme Court says that the conduct is not acceptable under the Charter. They have the right to do that. As a matter of fact, there are 350 rulings of the Supreme Court on the Charter of Rights. It is up to the court to continue, but that is enough to conclude that there is a strong movement of the jurisprudence in favour of my thesis that what the court is doing is not only perfectly legal but perfectly good. We live in a constitutional democracy.

It is obvious that we will never agree.

Senator Cools: I am not seeking —

The Hon. the Speaker: I am sorry, Honourable Senator Cools, but the 15-minute period for speech and questions has expired.

Senator Cools: Honourable senators, I rise on a point of order. Neither the British North America Act nor the Constitution Act, 1982 mention the powers of the Supreme Court of Canada. The powers of the Supreme Court of Canada have no constitutional existence.

The Hon. the Speaker: Senator Cools, what is your point of order?

Senator Cools: Neither of those two statutes mentions the powers of the Supreme Court of Canada. Read them and see.

Senator Beaudoin: Read section 41 of the Constitution Act, 1982. The Supreme Court is there.

Hon. Eymard G. Corbin: I do not want to belabour the point, but I thought Senator Beaudoin was delivering a speech when he was, rightfully, interrupted by a point of order. Does he intend to continue that speech now?

Senator Beaudoin: Of course, if I may. This Parliament, in its sphere, is supreme.

The Hon. the Speaker: I am sorry, but the allotted time has expired.

Senator Beaudoin: Could I be allowed one additional minute?

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

Hon. Senators: Agreed.

Senator Beaudoin: Thank you, honourable senators.

[*Translation*]

The legislator is attempting, with Bill C-16, to strike a balance between the powers of the police and the right to privacy guaranteed under section 8 of the Charter of Rights and Freedoms. Is this balance reasonable?

The legislator appears to be going as far as possible but stopping short of directly opposing the decision in *Feeney*. The two exceptions to the general rule of the warrant — exigent circumstances and the destruction of evidence — and the omitting of announcement prior to entry proposed in Bill C-16 have not been formally accepted by the majority of the Supreme Court. In the matter of the exigent circumstances, the majority has specifically refused to decide. The matter therefore remains open and the legislator cannot be blamed for trying to take advantage of it. In the case of destruction of evidence, the majority simply did not deal with the question. Here too, we may deduce that the question remains open. As for regular announcement, the majority specifically provided one condition on valid exercise of the mandate. The legislator, in Bill C-16, decided to set this condition aside in two special and limited situations. I consider this restriction reasonable and justified. It represents minimal infringement on the rights guaranteed by section 8 of the Charter of Rights and Freedoms.

Bill C-16 seems to strike a reasonable balance between the interests of government and those of individuals in protecting their privacy. It should, however, be referred to the Senate Standing Committee on Legal and Constitutional Affairs for expert opinions on the matter.

[*English*]

On motion of Senator Phillips, debate adjourned.

INCOME TAX CONVENTIONS IMPLEMENTATION ACT, 1997

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Austin, P.C., for 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.

Hon. Janis Johnson: Honourable senators, Bill C-10 allows Canada to ratify income tax treaties with Iceland, Sweden, Lithuania, Kazakhstan and Denmark. It also ratifies changes to existing treaties with the Netherlands and the United States.

The treaties set out a framework for taxes on investment income flowing between Canada and other countries. The treaties have two main objectives: The first is to avoid double taxation and the second is to prevent tax evasion. The treaties contain taxation rules that are different from the provisions of the Income Tax Act, and they become effective only if an act giving them precedence over domestic legislation is passed by Parliament.

As stated in the bill's summary, the conventions of this enactment are generally patterned on the Model Double Taxation Convention prepared by the organization for Economic Cooperation and Development. In the past, Canada has negotiated tax treaties with more than 70 countries. Many of these negotiations took place when the former Progressive Conservative government was in office. The agreements deal with problems that arise when residents of one country earn income in another. The treaties deal with the problem of double taxation which occurs when an individual or business pays comparable taxes in two or more countries on the same taxable income for the same period of time.

• (1550)

To illustrate this, double taxation would occur if a resident of one country was taxed in both Canada and that country on dividend income received from a Canadian company. Preventing double taxation helps facilitate investment. In essence, that is why this legislation is important.

The treaties prevent double taxation by limiting the application of each country's respective tax laws. The treaties ensure that taxes paid in one country are recognized in the other country. Thus paying taxes twice is avoided.

In addition, limits on withholding taxes in the country where the income is earned are set. An exemption is provided for certain income that would otherwise be taxed in the country where it is earned. The tax treaties outline the maximum withholding tax that may be charged on different kinds of income, such as dividends, royalties and interest.

Under the tax treaties included in Bill C-10, three things will happen. First, a general rate of withholding tax of 5 per cent will apply to dividends paid to a parent company and on branch profits. Second, a withholding tax of 10 per cent will apply to interest and royalties. Software, patent and know-how royalties, except in the treaties with Lithuania and Kazakhstan, will be exempt in the countries in which the payments arise. Third, the withholding tax and other dividends is set at 15 per cent.

Honourable senators, another important component included in this bill is the changes with respect to the tax treaty with the United States. The legislation changes the treaty rules for the taxation of social security benefits. Currently, there exists a situation where social security benefits paid by one country to residents of the other country are taxable only by the source country. Under the new protocol, and with this legislation, benefits will instead be taxable only in the country of residence. For Canadian recipients of U.S. benefits, 15 per cent of the amount of the benefits will be fully exempt from tax. This change will be retroactive to January 1, 1996.

Bill C-10 also changes the Canada-U.S. tax treaty rules for the taxation of capital gains. At present, the treaty allows each country to tax residents of the other on their capital gains from the sale of shares of any company regardless of where the company itself is a resident, if most of the shares' value is derived from real estate in the first country. Under Bill C-10 this will be changed so that one country can tax residents of the other in this way only if the company itself is a resident of the first country. This means that only Canada can tax Canadians' gains on shares of Canadian companies that hold U.S. real estate, and vice versa. This legislation helps to ensure that each country preserves its exclusive right to tax its residents in these circumstances.

Honourable senators, having said all this, a number of my colleagues have raised concerns regarding Bill C-10. As I understand it, these concerns are being dealt with and will be dealt with further by the committee tomorrow. I will outline these concerns for you. There are two. First, the bill grants Revenue Canada the authority to collect income taxes on behalf of Revenue Holland from Canadian residents, most of whom are Canadian citizens, and they may go back as far as 10 years in this pursuit. This issue has raised concern. I understand that an agreement has been reached on this issue, and that it will be discussed tomorrow.

The second issue of concern has to do with the increase for taxing benefits for Canadian residents collecting social security benefits from the United States. The increase will go from 50 per cent, which is the norm, to 85 per cent. This will represent a 70-per-cent increase regardless of a senior's financial situation. However, apparently they would incur this same increase if they were American citizens. Once again, this issue will be considered in committee tomorrow.

Honourable senators, Canada is an is outward looking country. With regard to tax treaties, we must take steps to ensure that double taxation is avoided. As it is, taxes are already far too high in this country. One cannot imagine the effect of having to pay taxes both here and elsewhere. Let us hope that tax relief for Canadians is not so far down the road, although I am doubtful that much relief will come under this Liberal government. However, there is always hope that the government will address this issue for the benefit of all Canadians.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Grafstein, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

[*Translation*]

QUEBEC

LINGUISTIC SCHOOL BOARDS—AMENDMENT TO SECTION 93 OF THE 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. Thérèse Lavoie-Roux: Honourable senators, I am pleased to address the amendment to section 93 of the Canadian Constitution. Before getting to the heart of the matter, which is the amendment to section 93 requested by the Government of Quebec, allow me to make a brief comment. I deplore the fact that the special subcommittee had so little time to review this very complex issue.

The Parti Québécois has been in office for almost four years and, during that time, it could have undertaken an appropriate process to achieve its valid objective of restructuring the school system. Instead, it suddenly comes up with a request that has to be answered in a matter of weeks. Consequently, our subcommittee had to conduct its review within an unrealistic time-frame, which prevented it from hearing a number of opinions, particularly from people who disagree with the proposed amendment. I regret that, given this context, we were not able to discuss adequately and impartially the current and future implications of the proposed constitutional change.

Let me say from the outset that it was not a partisan issue. It was a matter of deciding whether or not we should go ahead with the constitutional amendment.

[*English*]

The bill before us is complex. I doubt that in the time allotted to me I will be able to cover its many facets.

[*Translation*]

The government's intention to put in place a network of school boards along linguistic rather than denominational lines first sounded like good news to me. As mentioned, such a change has been considered for many years. Very few steps have been taken since 1976 to implement the new system. I am well aware of the need to adapt our school system to the current reality.

[*English*]

In 1976, I was a member of the special commission of the Montreal Island Council that was set up, at the request of the government of the day, to make recommendations to the Quebec government on a restructuring plan for the educational system of Montreal, although some steps had been taken already. At the time, I was the only one of the eight members on the committee to recommend linguistic school boards. My fundamental objective then — and it remains my objective today — was to ensure that the interests of children were better served. The question of article 93 was then quite an obstacle, but it remained the job of the government to find a solution. The report was transmitted to the government in October of 1976, a month or so after the PQ government took power in Quebec for the first time, where it remained for nine years, until 1985. They never proceeded to act on that report until, suddenly, it was a race against the clock.

• (1600)

[*Translation*]

For several years, there has been a need to establish linguistic school boards to adequately meet increasingly diversified requirements. Ethnic and religious pluralism has become evident, especially in large urban centres. In addition, given the way primary and secondary education is funded in Quebec, the school population, particularly in the English Protestant system in the greater Montreal area — after Bill 101 was passed, which precludes immigrants, even English-speaking immigrants from the United States and England, from attending English schools — dropped by 53 per cent. The steady decrease in the school population led to a corresponding decrease in human and material resources. Language-based schools will bring about economies of scale and the pooling of resources. More instructional material will be available to them than if they were still distributed among eight or nine school boards on the island of Montreal. The way the linguistic school boards will be organized, in Montreal and Quebec City in particular, should promote progress in the area of education. However, as the implications and foreseeable impact of amending section 93 became clearer, I began to wonder if this would be a step backward or forward. I realized that some fundamental principles were at stake.

First of all, I would like to remind the Senate that the proposed amendment takes away from Quebec minorities a constitutional guarantee that currently protects their educational rights, regardless of the government of the day and the options favoured by the majority. Minorities often require special protection to be free to exercise their rights, but perhaps the way to go would have been to broaden the scope of section 93 and not to take away guarantees given more than a century ago.

It was argued repeatedly that section 93 maintains a form of discrimination against those who are neither Catholic nor Protestant, and that is a fact. For several years, in Quebec more than anywhere else in Canada, the government has been funding other denominational schools. Take, for instance, Orthodox schools for the Greek community and schools for the Armenian community and the Jewish community. There are approximately 23 such schools in Quebec that receive substantial funding from the government. I think that Quebec is the only province in Canada to fund Jewish schools that teach their own language, religion and so forth.

I like to remember when I was Vice-Chair of the Commission des écoles catholiques de Montréal, and the Sephardic French Jews arrived from North Africa, among other places. We tried an experiment to allow them to be educated in French in their own community. They were given half a school. That did not work out very well because of their religious rites on one side and those of the Catholics on the other. They were then given the Maimonide school in Côte-Saint-Luc, which still serves francophone Sephardic Jews. All this to say that school boards were already prepared to take the existence of other religions into account. What, therefore, was the rush?

Many have pointed out that, without section 93, it would become difficult, if not impossible, to maintain denominational schools. If these fears were founded, a majority of Catholic or Protestant parents could be affected by the amendment to section 93.

If all schools, not just school boards, were obliged to remain neutral, how would parents exercise their right to see that their children receive a religious and moral education that is consistent with their beliefs and values? It is generally agreed that the consent of minorities whose rights would be removed is essential. The issue of consensus has often come up within the joint committee of the Senate and the House of Commons. The Government of Quebec assures us that the public agrees with the request for an amendment, but the briefs and testimony have revealed, on the contrary, that there is a great deal of confusion within the general public. Furthermore, the Government of Quebec has not allowed a public debate. Far from giving their consent, representatives of various minority groups affected have vigorously stated their opposition to the proposed amendment.

We have been told that the consensus among politicians is favourable, but not among parents. The burden of proof, however, lies with those requesting the amendment.

[*English*]

Throughout the debate, much has been said about whether there is consensus in Quebec on the proposed changes. With respect to the change to linguistic boards, the answer is yes.

[*Translation*]

And that is what we in committee realized with respect to the establishment of linguistic school boards. There was a genuine consensus with a few exceptions.

[*English*]

With respect to the proposed constitutional amendment, the answer is not known, for in Quebec there has been no public consultation and no studies on the full implication for Quebec's education system. However, the Quebec government, in consultation with the community, has given careful consideration to how it should proceed in order to respect the constitutional requirements of article 93, even as it establishes linguistic boards in every part of Quebec.

In 1993, the Supreme Court said that linguistic boards could be established everywhere, as long as the denominational rights of Catholics and Protestants were respected in the territories of the City of Montreal and the City of Quebec. In addition, the right of religious minorities to dissent must be respected everywhere outside of these cities.

That was the opinion of the Supreme Court in 1993. The issue was submitted to the Supreme Court by Mr. Claude Ryan, who was Minister of Education in Quebec at the time. He wanted to proceed with linguistic boards, and to somehow avoid the difficulty of abolishing article 93. Mr. Ryan said his proposal was feasible then. Now people are arguing, and confusing the issues. They mix in the commission report, which recommends confessional committees in each school. Things are complicated, but that report does not reflect Mr. Ryan's proposal.

I spoke to Mr. Ryan about this. He said his proposal was highly feasible. Among the witnesses we heard was the Ontario Catholic School Trustees Association. Perhaps some of you received a letter from their president, Patrick Daly. He states:

> I trust it was clear from our presentation that the concern of the Ontario Catholic Schools Trustees Association is not the introduction of linguistic school boards in Quebec but rather that the Government of Quebec feels that it must amend the Constitution to achieve this end. The Province of Ontario has already in place, and is furthering the development of linguistic school boards in this province.

[*Translation*]

The Hon. the Speaker: I am sorry to interrupt you, but I am told that your 15 minutes are up. Is leave granted to continue, honourable senators?

Hon. Senators: Agreed.

Senator Lavoie-Roux: Thank you for your understanding.

[*English*]

Thank you, Your Honour. This is quite a complex issue.

> They are furthering the development of linguistic school boards in this province which are both denominational and secular. At no time did the Government of Ontario feel that the Constitution of Canada had to be changed to achieve this end.

I think it important to note that the system exists elsewhere without having to deprive people of their rights.

The results of Quebec's Minister of Education's consultations are summarized in their report dated June 28, 1996. The consensus was clearly to proceed with linguistic boards. It is noteworthy that the report shows that the option of abrogating article 93 was rejected by a good majority, and that was from the province's consultations, not the federal government's.

The decision to change course by asking the federal government to agree bilaterally to abrogate article 93 is clearly a political move designed to challenge the federal government to release the provincial government from its constitutional obligation with respect to denominational rights in education. The federal government wants to play ball to show that Canada works, that the Constitution is flexible. The question we cannot answer is, at what price? With the removal of the obligation under article 93, can we expect the Quebec government to respect religious diversity by providing parents' choices with respect to moral and religious education in the schools? Will religious minorities be able to defend themselves, even without constitutional guarantees? What about English education? How will the amendment affect the government commitment to the English education system? Of course, in the resolution they presented, they indicated that they would assure English education. Only time will bring answers to these questions.

We do know, however, that the Quebec Minister of Education has announced a study to consider the place of religion in education. It is perhaps significant that it has long been the policy of the CEQ, the largest teachers' union, and the Parti Québécois to laicize the public schools in Quebec. It is quite interesting that the more articulate people in favour of the amendment were all groups that I know are for laicizing the school system. I recall an exchange wherein they said they wanted to laicize the whole society. I said, "Oh, good. What are you intending to laicize next?" They said, "The Constitution, because it starts with a reference to God."

[*Translation*]

Finally, I would like to remind you that an amendment to section 93 is not needed for the linguistic school boards to be created in Quebec. The Supreme Court of Canada has ruled that the linguistic school boards may be put in place without an amendment to section 93. The very wording of the resolution passed by the Quebec National Assembly acknowledges this. The amendment is desirable in order to repatriate complete control over education, and one witness wondered why important constitutional rights for minorities should be withdrawn if their non-application in Quebec is merely desirable, not necessary.

[*English*]

I should like to follow-up on Senator Pitfield's remarks as to his concern that the linguistic rights were not touched upon, and that he was quite apprehensive. Even before hearing Senator Pitfield, I was apprehensive about the English language in Quebec. Having followed this entire discussion of restructuring of the schools and linguistic boards for nearly half my life, I believe the reason the PQ government did not act before this year is that their militants always struggled for what they called "unified school boards." Some witnesses who came before us talked to us about unified school boards, meaning that everyone would be under the control of a majority French board.

I would not be skeptical if I were not seeing what they are doing right now with the English language in the field of health. A bill was passed not to make the hospitals bilingual but to give access in English for people who are in emotional or physical distress, which is not difficult in Quebec, particularly in the Eastern Townships where most people are bilingual. As a matter of fact, the staff now is doing a good job of it. However, Dr. Rochon, who is the Minister of Health, does not want to make official the regional plans for each region of Quebec. This is not a political bill but a humanitarian one.

Senator Pitfield has some concerns, and I, too, have concerns, because I have seen them work with the language bill. Consider the sign law, and how difficult they are being about that. If history proves me wrong, I will be very happy, but should such things happen, please remember that I tried to explain the situation.

Many people are pleased that the Government of Quebec has submitted a request to the Government of Canada which, for its part, made every effort to deliver a positive response in an extremely short period of time. Evidently, the two governments were focusing clearly on the political stakes. Quebec wanted to remove any constitutional restraint in this area, and the federal government wanted to show that the Canadian federation can evolve and be effective when working with its most intractable partner.

What about the future of education in Quebec and the other provinces? What about the protection of minorities? What about the rights of parents to choose a school that teaches values that correspond with their beliefs? Are these only minor issues? At some point in the debate, one may well have thought so. Personally, with my seven years' experience as chair of the largest school board in Canada, comprised of 230,000 students, I think that these matters are vitally important, and that they should not be used as bargaining chips in political negotiations.

I am sorry to say that I do not recommend the adoption of this report from the joint committee, and I say that because the conclusion, although not necessarily so in other parts, does not respect what we have heard, that it is —

[*Translation*]

This report must faithfully reflect what we have heard. For example, we read that we sought consensus within the two main groups affected, namely the Quebec Protestants and the Quebec Roman Catholics. Reading the presentations heard by the committee, it appears that there is a consensus among both Protestants and Catholics in Quebec in favour of the change. Frankly, I do not know where those people were!

[*English*]

• (1620)

As I said when I spoke previously, "No, this is not true, this should be changed. There is no consensus there." I did not say that there were none for or none against. The next day they came back with the same thing and I said, "Yes, but yesterday I pointed out to you that this was not a faithful report of what had been discussed."

[*Translation*]

Mr. Paradis, a member of the other place, said: You want to reopen the debate.

[*English*]

I do not want to reopen the debate. They were asking for comments on the report of the committee.

I am not saying that the entire report is wrong. However, in terms of conclusions, it is clear that there is a consensus on the establishment of linguistic boards. I have no problem with that, even if there were one or two, but I do not think that was the case.

In view of the proposed modification to section 93, a consensus is far from being reached. We were told, "Oh, the bishops favour this," but the bishops said that their consent to the linguistic board should not be interpreted as consenting to modification of section 93.

[*Translation*]

Honourable senators, in its report the committee recommended that both Houses of Parliament adopt the resolution to amend section 93. We were never asked at the end of the proceedings which members agreed or disagreed with the proposal. Those who had a dissenting opinion were asked to put it in writing, as Senator Wood and the Reform Party did. I was stuck with correcting the report. I did not have time to write a minority report.

The decision on this vote remains a very difficult one. Am I going to find myself in a position of having to abstain from voting?

[*English*]

For the first time in my nearly 30 years in political life, I may abstain. My decision is not yet firm, however I am not able to recommend the adoption of this report.

Hon. John B. Stewart: Honourable senators, I should like to ask the honourable senator a question.

Senator Lavoie-Roux: If I can answer it, certainly.

Senator Stewart: I am glad that Senator Beaudoin is here, because I suspect it is a question on which his views could be helpful.

As part of my professional duties, I used to try to explain section 93 of what once was called the British North America Act, 1867.

As I understood the history of the section, what was sought in what was to be the Province of Ontario was the protection of the separate schools operated there on behalf of the Roman Catholic subjects of Her Majesty the Queen, and that what was sought in what would become the Province of Quebec was to be protection against the majority in the provincial legislature of the dissentient schools in that province.

In other words, the protection afforded by section 93 for Ontario was for the separate Roman Catholic schools and, in Quebec, to use the same language, was for the separate Protestant schools. Other than that, the provincial legislature was to be the final authority with regard to education.

If I heard the honourable senator correctly, she argued that the effect of section 93, in the case of Quebec, is to protect the Roman Catholic schools from the majority in the legislature. However, when this section was written, the assumption was that the majority in the legislature would be Roman Catholic and that there was no need to protect the Roman Catholic schools in Quebec from a Roman Catholic majority in the legislature.

How does her interpretation of the section conform to the intention of those who enacted what we call the Constitution Act of 1867?

Senator Lavoie-Roux: Honourable senators, I am no constitutionalist. Section 93, which, everyone has told us, was a compromise at the time of Confederation, seems to have established more in terms of linguistic protection, as the Protestants were mostly English speaking and the Catholics were mostly French speaking. This section also gave protection to religion and, by ricochet, to languages. That is the way I interpret the section.

If His Honour will allow me, perhaps I could ask our very learned colleague, Senator Beaudoin to assist.

The Hon. the Speaker: Honourable senators, is leave granted? It is not within the rules.

Hon. Senators: Agreed.

Hon. Gérald-A. Beaudoin: In 1867, the Fathers of Confederation wanted to protect denominational rights; that is, the collective rights of the Roman Catholic groups and the Protestant groups. They gave that right to the four provinces, and it was extended to the other provinces with a few modifications and a strong modification in the case of Newfoundland.

Quebec had a majority of Catholics, and that is still the case. Catholic and Protestant denominational rights are protected. This was the idea of Cartier, Macdonald and Galt, in particular. Section 93(2) refers to Upper and Lower Canada, where the rights of the separate schools of Ontario are extended to the dissentient schools of the Queen's Protestants and Roman Catholics subjects in Quebec.

What we must remember is that Quebec City and Montreal had a denominational schools system. Outside Quebec and Montreal, the schools were neutral *de jure*, but *de facto*, they were mostly Catholic everywhere, except in some areas where they were Protestant. I believe we now have five dissentient school boards in Quebec, outside Montreal and Quebec City.

Section 93 refers only to denominational rights, not linguistic rights. The Privy Council was clear on that point in 1917, and it was addressed in 1982 with section 23 of the Constitution Act.

The system in Montreal and Quebec City was always the same: It is a denominational rights system. Outside Montreal and Quebec City, the right to dissent existed both for Catholics and for Protestants. Some groups exercised that right. However, for the community in general, *de jure* it was not Catholic or Protestant, but *de facto* it was, because they are such a strong majority throughout Quebec, except for the Protestants in the Eastern Townships and west end Montreal. It is a very complex situation.

• (1630)

The situation has changed to a certain extent, but denominational rights are still present. There are two theses. The thesis of the honourable senator is clear-cut. It is true that, in 1993, the Supreme Court said that we may add linguistic school boards in Quebec and keep denominational rights. There is no doubt about that. For one reason or another, the present government in Quebec city is thinking the other way.

Senator Lavoie-Roux: Because they have other plans.

Senator Beaudoin: What is before us is a resolution to set aside the four paragraphs of section 93. The system will be completely different from the system we have now, there is no doubt about that.

Senator Stewart: Honourable senators, I simply asked how the interpretation of section 93 put forward by Senator Lavoie-Roux conforms to the intention of those who enacted that section.

I gather Senator Beaudoin is saying that subsection (2) of section 93 was to protect the Roman Catholic schools in Quebec from the Roman Catholic majority in the legislature of the province of Quebec. Is that what he is saying?

Senator Beaudoin: No. Catholic denominational rights are protected entirely in Montreal and Quebec City. Outside Montreal and Quebec City, the schools are common in nature, which is close to "neutral" in law. It is quite different.

Outside Montreal and Quebec City, section 93(2) enshrined the right for Catholics and Protestants to dissent from the majority. The Fathers of Confederation said that outside Quebec City and Montreal, the schools will be common, but if a Catholic group or a Protestant group wished to dissent and to live under a denominational school system, they had the constitutional right to do so. The system may vary from one province to another. I know that New Brunswick has a different system.

In 1867, the Fathers of Confederation said that in provinces where there are Catholic groups and Protestant groups, and where denominational rights existed, the system will remain that way until the Constitution is amended. That was the "pact." The Supreme Court used that term. That is the only section in the Constitution of that nature. The Fathers said that education will be provincial except that the state will never be able to set aside the denominational rights of Catholic groups and Protestant groups where they are existing.

Senator Stewart: My honourable friend talks about the situation outside Quebec City and Montreal. He says that the situation there was mixed. However, in 1867, no one doubted that the legislature of the province of Quebec was dominated by Roman Catholics. Why does my honourable friend interpret section 93(2) as intended to protect Roman Catholics in those areas outside Quebec City and Montreal from the Roman Catholic majority in the legislature of Quebec?

Senator Beaudoin: It is true that Quebec has a Catholic majority. It is true that section 93 protects the denominational rights of Catholics and Protestants in Montreal and Quebec City and the right to dissent outside those two cities.

I know what the honourable senator means: Why did they protect the denominational rights of the majority if the majority was already Catholic? It is because, in 1867, the Fathers did not want the province to have a secular system. I think that was the reason.

The clergy was very strong at that time. Historically, it is well founded that the clergy was in favour of Confederation. Section 93 was part of the deal, whereby Catholic and Protestant denominational rights would be protected.

Some people say today that if Catholics form a majority in Quebec, they may do what they want. The difference, of course, is that in section 93, their rights were enshrined in the Constitution. If you change the system, their rights will be protected by laws or quasi-constitutional laws and not by the Constitution. That is exactly their reasoning.

People ask why it was necessary to protect a majority against a majority. In some provinces, there were no such denominational rights. In Quebec and Ontario, denominational rights existed. For 130 years, this has been the way in Quebec.

If you ask me whether Catholic schools are protected in Quebec, I would say that they are because of section 93.

Senator Stewart: My honourable friend appears to be arguing that the Fathers were unusually prescient, that they anticipated the day when the legislature of the province of Quebec might not comprise as many good Roman Catholics as it did in 1867. Looking forward, they anticipated the possibility that there could be the kind of legislature that we now see in Quebec.

This seems to be very imaginative constitutional interpretation, Senator Beaudoin.

The Hon. the Speaker: Honourable senators, I think we are skirting the issue and entering into a mini-debate.

Senator Beaudoin: Do not forget, Senator Stewart, that I will vote for the resolution.

Senator Lavoie-Roux: I have a question.

The Hon. the Speaker: Honourable senators, obviously the Senate is the master of its own rules. I must point out that if honourable senators wish to proceed with mini-debates within debates, it will be very difficult to complete our business.

Senator Lavoie-Roux: Honourable senators, this is proof that this debate is very complex. If not for the little time left to us before Christmas, I would have suggested that the Senate use its suspensive powers in relation to this resolution. We could then explore the issue more thoroughly than we have.

• (1640)

Hon. Dalia Wood: Honourable senators, I have a question. Do we have time?

The Hon. the Speaker: Honourable senators, I have a problem in that I have a message that I must deliver to you shortly. However, I should like to complete this piece of business first, since the honourable senator has a short question to the Honourable Senator Lavoie-Roux.

Senator Wood: During the committee meetings, section 23(1)(*a*) was raised several times. Each time, we were told that we must not discuss it at the committee meeting.

What would the honourable senator say to English-speaking Quebecers who say that we have given up the perfect opportunity to ask for the implementation of section 23(1)(*a*)? How can we say we are not dealing with a question of language when we are reorganizing Quebec school boards along linguistic lines? What is the honourable senator's opinion?

Senator Kinsella: That is a good question.

Senator Lavoie-Roux: This question was raised on a couple of occasions by some English-speaking people. I agreed that, although it was part of proposed section 23(1)(*a*), it was not the purpose of the amendment that was in front of us.

There is a weakness there that certainly should be reviewed, perhaps in the second phase or with the initiative of some senators. Do not forget that in so doing we would be touching upon the language issue, and it would involve quite a debate.

[*Translation*]

On the eve of a referendum, it is not appropriate to raise the matter of language in Quebec. This is an argument the Parti Québécois continues to exploit to heighten passions. You are right, honourable senator. And, as I mentioned earlier, the anglophone community is shrinking.

[*English*]

Senator Wood: Honourable senators, the honourable senator is saying that, for the sake of the package we have before us or will have before us, we must let the English-speaking minority in Quebec go by the wayside. We know that English rights will be plundered in this debate.

Senator Lavoie-Roux: I could not convince Minister Dion to give us an extra two weeks. How long would it take me to convince him to enter that debate at this point? It is a bit difficult.

Hon. Jerahmiel S. Grafstein: Honourable senators, the senator raised an issue of the evidence with respect to the committee. I was a member of that committee. With leave of the Senate, I wish to address that subject-matter with Senator Lavoie-Roux, if I could.

The Hon. the Speaker: Honourable senators, is it agreed?

Hon. Senators: Agreed.

Senator Grafstein: I was particularly taken with respect to the honourable senator's comments on the evidence received from the Roman Catholic archbishops of Quebec. I read that letter, which was dealt with at committee. The letter clearly said to me — perhaps you have another letter that I have not seen — that the archbishops were not opposed to this resolution. I read that. We then asked questions about it, and so on.

We heard from Catholic teachers, Catholic school boards and Catholic students, all of whom were in favour of the amendment. There were certainly some laymen here, and in other places, and certain priests who were not in favour. However, from the archbishops, from the structure of the church, we received a letter which in effect said — and we deliberated on that letter and it is part of the record — that the archbishops were not opposed. The honourable senator has indicated to the Senate that they were opposed. Please explain the difference.

Senator Lavoie-Roux: Honourable senators, I did not say they approved. I said that the archbishops said that they were for linguistic boards, but how will that be achieved by an amendment such as the one in front of us?

Monsignor Morrissette's letters said that we never pronounced ourselves on the value and abrogation of article 93. We leave the means to achieve the objective in the hands of the politicians. I do not know if the archbishops were also politicians — I think perhaps they were — but the only thing they agreed to was linguistic boards.

The Hon. the Speaker: Honourable senators, I regret that I must interrupt at this point.

Senator Grafstein: Honourable senators, I have a final comment.

Hon. Orville H. Phillips: On a point of order, earlier today, when Senator Cools was asking questions, His Honour ruled that there was a 15-minute limit. Why is there a 15-minute limit in one case, when on the other hand the debate on another matter continues, from one person to another, each of them taking 15 to 20 minutes?

Senator Grafstein: Because there was consent.

Senator Phillips: They should be treated in the same way.

The Hon. the Speaker: Honourable senators, the difference was that leave was granted to Senator Lavoie-Roux. As long as questions are asked of her and the Senate agrees to give leave to do so, I cannot interfere. Leave was not requested in the case of the Honourable Senator Cools. That was the difference.

On motion of Senator Kinsella, for Senator Lynch-Staunton, debate adjourned.

[*Translation*]

ROYAL ASSENT

NOTICE

The Hon. the Speaker informed the Senate that the following communication had been received:

RIDEAU HALL

December 8, 1997

Sir,

I have the honour to inform you that the Honourable Charles Gonthier, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, will proceed to the Senate Chamber today, the 8th day of December, 1977 at 5 p.m., for the purpose of giving Royal Assent to certain Bills.

Yours sincerely,

Judith A. LaRocque
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

[*English*]

VISITOR IN GALLERY

The Hon. the Speaker: Honourable senators, before we proceed to the next order of business, I should like to recognize a visitor in our gallery, namely, the leader of the New Brunswick Progressive Conservative Party, Mr. Bernard Lord.

Hon. Senators: Hear, hear!

CANADA EVIDENCE ACT
CRIMINAL CODE
CANADIAN HUMAN RIGHTS ACT

BILL TO AMEND—REPORT OF COMMITTEEADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Legal and Constitutional Affairs (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, with an amendment and observations), presented in the Senate on December 4, 1997.

Hon. Lorna Milne: Honourable senators, as Chairman of The Standing Senate Committee on Legal and Constitutional Affairs, I have the honour to move the adoption of the report of 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.

Bill S-5 contains a number of proposals to remove barriers to full participation and to ensure the equality of rights of persons with disabilities. It also includes some substantive as well as administrative changes to the Human Rights Act. It is fitting that this bill was reported back to the chamber between the International Day of the Disabled, December 3, and International Human Rights Day, December 10.

The bill was reported with one amendment. Clause 16 of the bill would permit information relating to a prohibited ground of discrimination to be collected, provided that this was done as part of the adoption or carrying out of a special program, plan or arrangement pursuant to section 16 of the Human Rights Act. Special programs are recognized by section 16 to prevent or reduce disadvantages, in employment or in the provision of goods and services, that are suffered by a group of individuals on the basis of certain prohibited grounds of discrimination.

Unfortunately, for reasons unclear to the committee, not all of the grounds of discrimination prohibited by section 3(1) of the Canadian Human Rights Act are included in section 16. We have therefore amended clause 16 of Bill S-5 to rectify this omission and to ensure consistency within the provisions of the federal Human Rights Act.

The committee heard and received submissions from representatives of all parties interested in the proposed legislation. While there was broad support for the general principles and objectives in Bill S-5, a number of issues arose with respect to the choice of words in relation to certain provisions. The most contentious of these pertained to clause 10 of the bill, the proposed "duty to accommodate" provisions of the Canadian Human Rights Act.

Concerns were also raised regarding the language used in reference to the proposed Canadian Human Rights Tribunal. For example, the English version of subclause 50(1) refers to the members or panel conducting the inquiry, while the French version refers to "le membre instructeur". Despite assurances by department officials that the wording used in the bill reflects terms, concepts and precedents used in each official language, the committee has urged the Minister of Justice to review the language used in Bill S-5 to ensure concurrence between the English and French versions.

A number of concerns about the operation of the Canadian Human Rights Act that were outside the scope of this bill were also brought to the attention of your committee. For example, it was urged that "social condition" be added to the bill as a prohibited ground of discrimination. It was also advocated that careful attention be paid to ensuring the independence of the proposed Canadian Human Rights Tribunal relative to the Canadian Human Rights Commission. The committee was, therefore, pleased to hear from the Minister of Justice that she is committed to conducting a broader review of this legislation.

Senator Watt raised a number of important issues related to aboriginal people. Again, these issues were outside the scope of the bill before us, but your committee shared Senator Watt's concerns. Senator Watt asked witnesses to consider the relationship between the Indian Act and the Canadian Human Rights Act. His interventions also touched on international recognition of the aboriginal community in Canada as an indigenous people. The aboriginal perspective on human rights law in respect of social condition and poverty was canvassed when we had professor Martha Jackman of the University of Ottawa before us.

Finally, Senator Watt expressed his concern about the balance between individual rights and collective rights, particularly as this balance concerns the aboriginal community in Canada.

As we approach a new millennium and celebrate the fiftieth anniversary of the Universal Declaration of Human Rights, all of these important issues will need to be squarely addressed in the context of a full-scale review of Canada's human rights system.

As we consider Bill S-5, honourable senators, we should keep in mind that, for Canadians with disabilities in particular, it is time to eliminate obstacles to daily living in areas such as employment, training, transportation, communications and housing, where most Canadians take equality for granted.

The Hon. the Speaker: It was moved by Honourable Senator Milne, seconded by Honourable Senator Mercier, that this report be adopted now.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

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

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

VETERANS HEALTH CARE SERVICES

REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE REQUESTING AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Social Affairs, Science and Technology (*budget—study on the state of health care in Canada concerning veterans of war and Canadian service persons*), presented in the Senate on December 3, 1997.

Hon. Orville H. Phillips: Honourable senators, I move, on behalf of Senator Murray, the adoption of this report.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

[*Translation*]

TRANSPORT AND COMMUNICATIONS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Lise Bacon, pursuant to her notice of December 4, 1997, moved:

> 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.

Motion agreed to.

[*English*]

BUSINESS OF THE SENATE

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, we are getting very close to the time of Royal Assent. It is agreed on both sides that all other items on the Order Paper will stand.

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

Hon. Senators: Agreed.

The Senate adjourned during pleasure.

[*Translation*]

ROYAL ASSENT

The Honourable Charles Gonthier, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, having come and being seated at the foot of the Throne, and the House of Commons having been summoned, and being come with their Deputy Speaker, the Right Honourable the Deputy Governor General was pleased to give the Royal Assent to the following bill:

> 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. (Bill C-11, *Chapter 36, 1997*)

The Honourable Peter Milliken, Deputy Speaker of the House of Commons, then addressed the Honourable the Deputy Governor General as follows:

> May it please Your Honour:
>
> The Commons of Canada have voted certain supplies required to enable the Government to defray the expenses of the public service.
>
> In the name of the Commons, I present to Your Honour the following bill:
>
> An Act for granting to Her Majesty certain sums of money for the Government of Canada for the financial year ending March 31, 1998 (Bill C-23, *Chapter 35, 1997*)
>
> To which bill I humbly request Your Honour's assent.

The Honourable the Deputy Governor General was pleased to give the Royal Assent to the bills.

The House of Commons withdrew.

The Honourable the Deputy Governor General was pleased to retire.

The sitting of the Senate was resumed.

The Senate adjourned until tomorrow at 2 p.m.

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