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THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Wednesday, December 10, 1997

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

Prayers.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I would draw to your attention the presence of some distinguished visitors in our galleries. As honourable senators are aware, last year was declared to be the year of Asia-Pacific in Canada. During the course of the year, there were many events in the country beginning with the forum of the Asia-Pacific Parliamentary Group in Vancouver in January and ending with the APEC conference in Vancouver at the end of November.

Today, on behalf of the Senate, I was pleased to receive the heads of missions of the countries from the Asia-Pacific region in my chambers. I am happy now to have them in our galleries. I introduce them to you, honourable senators.

[*Translation*]

I present the heads of mission from the Asia-Pacific region, who have worked hard this year to bring not just governments, but people, closer together; many artistic and cultural events took place during the year because of their initiative.

[*English*]

Hon. Senators: Hear, hear!

SENATORS' STATEMENTS

UNITED NATIONS

FIFTIETH ANNIVERSARY OF UNIVERSAL DECLARATION OF HUMAN RIGHTS

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, given the unique importance of the Universal Declaration of Human Rights as a common standard of achievement for all peoples, I am mindful of the key contribution made by Professor John Peters Humphrey of Canada in preparing the draft which led to its adoption by the United Nations. We on this side, as others, feel strongly that the launch of the fiftieth anniversary should be marked in a special manner by publicly reflecting on the various articles of this remarkable document.

The preamble to the universal declaration and the 30 articles which follow demonstrate the ability and will of nations to agree to uphold and respect the inherent dignity of humankind. The preamble speaks of the fundamental worth of the human family based on freedom, justice and peace throughout the world. It also recognizes that a world free from want and need can only be attained if its people are free to exercise their economic and social rights. Furthermore, it lists duties and responsibilities that all human beings have for one another in the promotion and enforcement of the universal declaration.

The articles which follow the preamble set out in detail the fundamental rights and freedoms which should be enjoyed by the human family throughout the world. That we have the Universal Declaration of Human Rights is, in great part, due to the work of Professor Humphrey of McGill University. From 1947 to 1966, he served as director of the Division of Human Rights at the United Nations. His book *Human Rights and the United Nations: A Great Adventure* relates in detail the delicate negotiations among nations which produced the universal declaration.

On the fortieth anniversary of the universal declaration, Professor Humphrey defined human rights as:

> ...those rights without which there can be no human dignity. They are derived from the inherent dignity of the human person.

On this, the launch of the fiftieth anniversary of the declaration, his words have never been more pertinent. We, as Canadians who enjoy these rights, must be ever vigilant to ensure that they are respected around the world, never forgetting the preamble's first words:

> Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, today marks the forty-ninth anniversary of the Universal Declaration of Human Rights. It is a day that should cause us to reflect on how far we have come in instilling, worldwide, the notion that every individual, no matter their place, origin or status in society, is deserving of respect.

The declaration of 1948 flowed directly from the brutalities and inhumane treatment that we, as members of the human race, imposed upon one another during the Second World War. It is inconceivable to any of us that what occurred during those years of war could occur again, but it is occurring all around the world, albeit on a much smaller scale. So long as an individual anywhere is denied what we recognize as basic human rights, each one of us has a duty to raise our voices and express our abhorrence for what is taking place.

The defence of human rights is not just about what happens in other lands. It concerns what takes place in our land, in each of our hearts, in each of our souls.

ECONOMIC RIGHTS AS HUMAN RIGHTS

Hon. Erminie J. Cohen: Honourable senators, the Universal Declaration on Human Rights makes it abundantly clear that economic rights are human rights. It does this both in Article 25 and in Article 22 which states:

> Everyone, as a member of society, has the right to social security and is entitled to realization...of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Unfortunately, economic rights have not thus far been treated as human rights in Canada, with the sad result that poverty and its consequences continue to afflict far too many of our fellow Canadians and their families.

The fiftieth anniversary of the universal declaration is being launched at the same time as the first year of the International Decade for the Eradication of Poverty is drawing to a close. We are thus presented with a golden opportunity to affirm here in Canada the undeniable fact that poverty is, first and foremost, a human rights issue. Our economic rights should be addressed as such by our governments, jealously guarded by our citizens and defended with the same passion as civil and political rights. Only by taking that approach can we hope to conceive and implement effective long-term solutions to the terrible problem of poverty.

I became aware of the tremendous importance and potential of treating economic rights as the human rights that they were while researching my report, "Sounding the Alarm: Poverty in Canada," which was released last February. I was shocked to learn of the growing disparity between what our Canadian delegates are signing in international fora and domestic policy outcomes. Notable in this regard is Canada's heartbreaking failure to eradicate poverty within its borders. In signing the International Covenant on Economic, Social and Cultural Rights, the federal government recognized the rights of every Canadian to

> ...an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continued improvement of living conditions.

Yet, more than 20 years later, these rights remain nothing more than grand ideals. They are still not protected by Canadian human rights legislation and thus do not carry the force of law or even the weight of moral authority.

As a result, Canada's social programs have been chipped away to the point where they no longer provide our most vulnerable citizens with the basics of nutritious food, adequate clothing and security in housing. For example, food banks which were non-existent in the 1970s now number into the thousands, and almost 400,000 Canadians live in substandard housing.

It is, therefore, honourable senators, not surprising that in June 1993 a United Nations committee released a report that was sharply critical of Canada's lack of progress in implementing this covenant. Just last month, that same UN committee was so concerned about Canada's record that it asked the federal government to appear before it, months ahead of schedule, to defend the last five-year report that it submitted.

As the first step in changing the sorry state of affairs, I recommended in my report that the Canadian Human Rights Act be amended to extend and give legal effect to the principle that everyone should have equal opportunity, by banning discrimination based on social condition.

Simply put, discrimination means treating people differently, negatively or adversely without a good reason. As used in human rights law, it means making the distinction between certain individuals or groups based on a prohibited ground. Clearly, Canada's international human rights commitments demand that social condition be made a prohibited ground.

Poor Canadians will remain vulnerable to discrimination based on their social condition, for example, when seeking accommodation or services, or being subjected to the "poor bashing" that has become so rampant in our society and on our public airwaves.

Sadly, negative stereotypes and social stigma are a constant fact of life for Canadians living in poverty.

The Hon. the Speaker: Honourable Senator Cohen, I regret to interrupt you. Your three-minute period has expired. As you know, many other speakers wish to be heard.

HUMAN RIGHTS AND ETHNICITY

Hon. Donald H. Oliver: Honourable senators, one of the reasons the United Nations has not had difficulty in repeatedly concluding that Canada is one of the best countries in the world in which to live is because of our protection of the rights of individuals — our human rights.

The United Nations is on the verge of celebrating the fiftieth anniversary of the Universal Declaration of Human Rights. The protection of human rights is something meaningful and significant to us as members of the Senate of Canada because the Constitution urges us to act and to represent and protect the interests of regions and minorities.

In 1993, Canadians were shocked to learn that the military had been involved in the brutal slaying of a Somali youth, but, as all honourable senators know, human rights as they are understood today truly began with the aftermath of World War II and, in particular, the Jewish Holocaust. I remember from my studies of history as an undergraduate at Acadia University that, in the 1930s, there was strong ethnic rivalry between and among various European nations and that the exploitation of these ethnic passions and misguided nationalism was at the root of both the atrocities of the Second World War and the horrendous mistreatment of Jews.

•(1350)

Canada is one of the best countries in the worlds in which to live, but we still have a great deal of work to do to give full protection to the rights of all Canadians. Only two weeks ago, we were again reminded of the ugly outburst of former Quebec premier Jacques Parizeau, who, as honourable senators will recall, on the aftermath of the Quebec referendum in October 1995, blamed "ethnics" for the defeat of the referendum. In Calgary a few weeks ago, Mr. Parizeau again lit the torch of hatred by defining those ethnics, namely Italians, Jews and Greeks. With this type of insensitivity coming from our political leaders, we do indeed have a long way to go in Canada.

Honourable senators, I should like to conclude this statement by calling upon all senators to help equalize the opportunities for all Canadians — to help ensure our human rights are protected — by agreeing to establish immediately a standing Senate committee on human rights. The genesis for this idea comes from the report of the Lamontagne-Goldenberg committee tabled in the Senate in November of 1980. I strongly urge all honourable senators, particularly the Leader of the Government, Senator Graham, to push for the immediate establishment of such a committee which would do such things as review charter court decisions to determine their effect on minority rights and recommend changes in statutes where appropriate, review the work of the Canada Human Rights Commission and its annual report, utilize the Senate's power to initiate legislation to implement changes in the Canadian Human Rights Act as recommended by the commission, review the work of the Centre for Human Rights and Democratic Development, and finally, undertake investigative studies into human rights abuses within Canada, reporting recommendations for action to the Senate.

Let us make this our special millennium project for the protection of human rights.

HUMAN RIGHTS AND THE LAW

Hon. Duncan J. Jessiman: December 10, 1997, marks the launch of the fiftieth anniversary of the Universal Declaration of Human Rights. I have been asked to provide a human-rights-related statement respecting sub-article 1 of Article 11, which reads as follows:

> Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

The above statement is similar to the wording that is included in section 11(d) of the Canadian Charter of Rights and Freedoms, which reads:

> Any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal...

This was proclaimed as part of the Constitution Act of Canada in 1981 and as such entrenches the presumption of innocence as part of the supreme law in Canada. Similar wording of this right can be found in the Canadian Bill of Rights of 1960 and in the various provincial human rights codes and charters. The declaration has been cited by Canadian courts in 115 cases.

This principle of the presumption of innocence of an accused person dates back as far as at least the Roman Empire, 363 CE, when a judge, in adjudicating a case involving a charge of embezzlement, became irritated by the absence of proof and the accused's protestations of innocence, turned to the Roman Emperor Julian and demanded, "Can anyone ever be proved guilty if it is enough to just deny the charge?" Julian replied, "Can anyone ever be proved innocent if it is enough just to accuse him?"

Chief Justice Dickson of the Supreme Court of Canada in *Regina v. Oakes*, 1986, 26 D.L.R. 200 (4th) beginning at page 212, said:

> The presumption of innocence protects the fundamental liberty and human dignity of any and every person accused by the State of criminal conduct. An individual charged with a criminal offence faces grave social and personal consequences, including potential loss of physical liberty, subjection to social stigma and ostracism from the community, as well as other social, psychological and economic harms. In light of the gravity of these consequences, the presumption of innocence is crucial. It ensures that until the State proves an accused's guilt beyond all reasonable doubt he or she is innocent.

The Hon. the Speaker: I regret to interrupt the honourable senator, but his time is up.

HUMAN RIGHTS AND PARLIAMENTARY FREEDOMS

Hon. Finlay MacDonald: Honourable senators, while much has been written and spoken about freedom of religion, I wish to reflect on the part of this article which lifts up the dual, related freedoms of thought and conscience. These freedoms are

particularly vital in the context of Parliament. The freedom of members of Parliament, both senators and members of the House of Commons, to voice their opinions without fear of retribution is of the highest importance if representation is to be effective and relevant to the people.

In the Canadian context, the model of responsible party government holds that a political party is the only kind of organization that is both large enough to provide the teamwork necessary for developing consistent and effective policies, and visible enough for ordinary people to know that it is in charge and to hold it accountable for government performance. To accomplish this, party discipline and partisan political loyalties become durable commitments.

However, must they become obdurate commitments hardened against or resistant to any influence or persuasion? There must come a time in the life of every Parliamentarian or representative when he or she feels compelled to break from the views of the leadership based on his or her own thoughtful judgement brought to the issue at hand.

I do not believe that infrequent incidents of apostasy should be met with sanctions imposed by the leadership. Such actions of dissent demonstrate that the freedoms of thought and conscience framed in this article of the Universal Declaration of Human Rights are alive and well within our political system.

I believe that our political institutions can only grow and become more relevant to the people whose views they are to represent when office holders feel free from time to time to voice opinions which may differ from those of the political party to which they belong.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, the normal time for statements is over. However, I make reference to rule 22(8).

> At any time during the time provided for consideration of "Senators' Statements," either Whip may approach the Speaker and request that the time provided for the item be extended. If such a request is received, the Speaker shall so inform the Senate at the next opportunity and shall, at the end of the time provided for the item, ask if the Senate grants leave to extend the time provided for the item and, if such leave is granted, the time provided for the item will be extended for a period not to exceed thirty minutes.

I wish to advise the Senate that I have such a request from a whip. I must now ask the Senate if leave is granted.

Hon. Phillippe Deane Gigantès: No.

Some Hon. Senators: Agreed.

The Hon. the Speaker: In that case, statements are concluded.

Senator Gigantès: Your Honour, in accordance with the wishes of my leader, I withdraw my objection.

The Hon. the Speaker: Then I must ask once again if leave is granted to extend Senators' Statements?

Hon. Senators: Yes.

The Hon. the Speaker: Leave is granted.

HUMAN RIGHTS AND SLAVERY

Hon. A. Raynell Andreychuk: Honourable senators, as we approach the fiftieth anniversary of the Universal Declaration of Human Rights, we must remind ourselves that the declaration was proclaimed as the highest aspiration of common people. Without inherent dignity and without the recognition of the equal and inalienable rights of all members of the human family, no freedom, justice or peace can be had in the world.

Article 4 of the declaration states:

> No one shall be held in slavery or servitude: Slavery and the slave trade shall be prohibited in all their forms.

•(1400)

Slavery was the first human rights issue to arouse worldwide attention and international concern, and, despite universal condemnation of it, we must face the fact that slavery as a practice remains a grave, persistent and spreading problem in the world as we approach the next millennium.

As the United Nations has pointed out, the word "slavery" today covers a variety of human rights violations. In addition to traditional slavery and the slave trade, these contemporary abuses include the sale of children, child prostitution, child pornography, the exploitation of child labour, the sexual mutilation of female children, the use of children in armed conflicts, debt bondage, the traffic in persons, and the sale of human organs.

It has been noted that the groups most vulnerable and most liable to be subjected to such forms of exploitation are women, children, migrant workers, nomadic groups, and indigenous populations. No society is immune, and Canada must address the issues of child exploitation, child prostitution, violence against women, and other unacceptable forms of exploitation within Canada.

We must also rededicate ourselves to ensuring that our practices abroad do not submit the most disadvantaged to slavery and abuse. The survival, protection and development of children must be our focus for the new millennium. We must urge the Government of Canada to promote the respect of human rights, and the elimination of slavery in particular, as a top priority on behalf of the citizens of Canada, abroad and at home.

[*Translation*]

HUMAN RIGHTS AND THE STATUS OF THE CITIZEN

Hon. Roch Bolduc: Honourable senators, Article 21 of the Universal Declaration of Human Rights, proclaimed by the United Nations in 1948, makes three important statements about the status of the citizen.

First, it states that everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Second, it states that everyone has the right of equal access to public service in his country.

And third, it states that the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting.

According to the first statement, everyone has the right to take part in the government of his country. People have the right to govern or to select those who shall govern them. In this case, govern is used in its broadest sense and also includes legislative, executive and judicial responsibilities, to use the Aristotelian terms that have come back into fashion since the 18th century.

As for the manner of choosing certain people to govern, those responsible for implementing the will of the people, the third statement addresses this by emphasizing an individual's right to vote freely and periodically for the candidate of his choice in an election.

I said certain people to govern because the second statement addresses the manner of being named to public office: The process must take place in conditions of equality. This calls for an explanation.

For legislative functions, the third statement makes it clear that electoral races must be honest. As for executive, not political, functions, in other words, public administration, it follows quite clearly from the declaratory intention that such positions must be filled through competition open to all those meeting the normal job requirements, rather than arbitrarily. It can also be concluded that judges must also be selected on the basis of merit through a process that is transparent.

It is interesting to note that these values of civilization set out in the declaration have largely been echoed in the public statutes enacted by Canada and the provinces over the last 50 years. The freedom and dignity of Canadian citizens has been strengthened as a result.

[Senator Andreychuk]

[*English*]

HUMAN RIGHTS IN TIBET

Hon. Consiglio Di Nino: Honourable senators, half a century ago, the world rejoiced at the adoption by the United Nations of the Universal Declaration of Human Rights. None rejoiced more than Canada, recognized worldwide as a place where rights and freedoms were practised and respected.

Article 27 of the Universal Declaration of Human Rights states that:

> Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

It is not so in many countries today, including Tibet where Chinese oppression is an unceasing fact of life for millions of men, women and children. The Chinese occupation of Tibet has resulted in the destabilization of traditional Tibetan society and the destruction of its ancient culture, leading to the denial of basic human rights and fundamental freedoms for the Tibetan people.

Every year, hundreds of Tibetans risk their lives in traversing the most dangerous mountains in the world in order to bring their children to Dharamsala in northern India, the site of the Tibetan government in exile. There they leave their children in the care of Tibetan refugees who will teach them the language and culture of their forefathers. Parents risk their lives and the lives of their children only to leave their loved ones, sometimes for 10 or 15 years, sometimes never to see them again.

For Canadians, these sacrifices are beyond comprehension. These sacrifices, honourable senators, would be unnecessary if the government of the People's Republic of China stopped the cultural genocide of this unique and distinct peoples. Beijing's persistent and brutal abuses are a planned, systematic program of extinction of a rare and important world culture. Shamefully, the world is standing in line, waiting for business deals, while the cries of agony and despair from Tibetans, and a few other braves souls who are not willing to prostitute themselves on the economic altar, are ignored.

In the past, Canada has been universally recognized as a world leader in defending the weak, holding out hope to the desperate, and setting an example to all nations, but today that reputation is being tarnished. I do not accept the Chrétien government's weak and ineffective criticism of the Chinese administration's barbaric behaviour and total disregard for the principles of the UN Declaration of Human Rights.

Canada must set an example and raise its voice in protest and in support of the millions who are forbidden to speak on their own behalf. Only by doing so will we send the world's oppressed peoples a strong message of hope, so that they can enjoy their customs and cultures without fear of reprisals from occupying tyrants.

HUMAN RIGHTS AND THE FAMILY

Hon. Thérèse Lavoie-Roux: Honourable senators, the family has an essential role to play in our society. Article 16, section 3 of the Universal Declaration of Human Rights describes the family simply as "the natural and fundamental group unit of society" that is "entitled to protection by society and the state." Often we take the family for granted. Recently, it has been commonplace for governments and organizations to refer only to the plight of children, ignoring the fact that children belong to a family. It is the family that must be focused on as a whole.

Children are poor because their parents are poor. Their parents are poor because they are unemployed or underemployed, and because their disposable incomes are falling. Many are in this situation because they are undereducated, or have not been given the opportunity to train in an appropriate skill.

[*Translation*]

It is almost impossible today to try to determine what is a typical family because of the increasing diversity of family units. Since the "traditional" family made up of two parents and their children still exists, it must be given greater support. There are also families made up of parents who have remarried, families where the parents are in a common law relationship, single-parent families and families where the parents are of the same sex. These families are creating new challenges for us and we must find the means to meet their needs. However, each of these families is a group of people united by a common affiliation.

The Canadian family has undergone other changes over the past 30 years. Women have joined the workforce in unprecedented numbers. In many families, the female partner can no longer stay at home to raise the children. Indeed, there are now more families with two incomes than traditional one-income families. The result is that the modern family is faced with many new challenges. The two parents have to divide their responsibilities between the workplace and the home. They have to find reliable and affordable child care services. Furthermore, since the population is aging, they have to look after older family members. In fact, because of the rapid decrease in funding for health care and social services, 25 per cent of seniors live with their families, while 11 per cent live in institutions.

Obviously, the well-being of families is a priority for Canadians. If things are not going well in a family, this affects not only its members but also all of society. Families are closely linked to the economy and to the community. Many changes have occurred in the family, and there will undoubtedly be many more. Governments have to be responsive to these changes. The family is a unit composed of individuals and as such, its members are entitled to protection and to sufficient resources to be able to assume their role in society.

[*English*]

There are three paragraphs to Article 16 of the Universal Declaration of Human Rights. I should like to draw your attention to the second one:

> Marriage shall be entered into only with the free and full consent of the intending spouses.

Honourable senators, we are all aware of women who are brought from poorer countries in order to become wives for European or American husbands. This has been a problem.

[*Translation*]

The Hon. the Speaker: Honorable Senator Lavoie-Roux, I am sorry to interrupt you, but your three minutes are up.

[*English*]

HUMAN RIGHTS AND THE RIGHT TO PRIVACY

Hon. Norman K. Atkins: Honourable senators, Article 12 of the Universal Declaration of Human Rights states:

> No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to a tax upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

This article of the Universal Declaration of Human Rights is perhaps more relevant now than it was when it was enacted. Protection of privacy became vitally important as we moved into the age of computers. We are all aware of the personal data that is stored in the memory of a computer, and of the abuse one could suffer if any of that data was either incorrect or used in an unauthorized fashion.

Our medical histories, credit information, bank balances and investment information are all stored in various computer terminals where we transact our personal business. The government has records which contain income tax information, and with recent changes to the Canada Elections Act, Elections Canada now has permanent records of where we live, the number of voters in each household and the sex of each voter. We must be protected against the unauthorized collection or use of such information.

I would have to disagree with Marshall McLuhan, who was unaware of all the new technological advances when he made his utterings. He said that as the world reached the global village stage, we would no longer place a high value on individual privacy. I believe that we are now living in a global village, and privacy has become even more important than it ever was. One has only to take note of the establishment and work of both federal and provincial privacy commissions to see the importance that Canadians place on this right.

It is also important that, as part of our right to privacy, we be able to access the computer banks which store personal information about us. While we should enjoy the privacy right to be left alone, we must also have the right to seek out and correct false information, gathered and stored, regarding our personal lives.

Honourable senators, everyone in Canada should be able to live their lives peacefully without fear of an invasion of their privacy.

HUMAN RIGHTS AND PROPERTY RIGHTS

Hon. Gerry St. Germain: Honourable senators, Article 17 of the Universal Declaration of Human Rights states:

> 1. Everyone has the right to own property alone as well as in association with others.
>
> 2. No one shall be arbitrarily deprived of his property.

These are my reflections on property rights, honourable senators.

This article setting out the right of everyone to own property and not to be arbitrarily deprived thereof is virtually taken for granted in Canada. This right, while enshrined in the 1960 Diefenbaker Bill of Rights, is not found in the constitutionally entrenched Charter of Rights and Freedoms.

Section 1(*a*) of the Bill of Rights states:

> It is hereby recognized and declared that in Canada, there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely:
>
> > (*a*) the individual right to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof without due process of law;

As the right to property has been interpreted over the years by the courts, both in Canada and elsewhere, it has broadened in meaning so that it no longer relates just to owning or possessing real or personal property. It has been interpreted to encompass such matters as social security, health care and the right to a minimal standard of living.

While most of us in Canada take for granted that property will not be taken from us without due process, one has to be ever vigilant to ensure that this is the case. In the Thirty-fifth Parliament, there was an attempt by the government to deprive owners of their leasehold interests at Pearson airport of their property, while denying them access to the judicial process. I am proud to say that the Progressive Conservative senators — led by Senator Finlay MacDonald, to be exact — championed the cause against this unlawful violation of property rights. Such actions by government only serve to further convince me of the need to entrench property rights in our Charter of Rights and Freedoms.

[*Translation*]

HUMAN RIGHTS AND THE LEGAL PERSONALITY

Hon. Gérald-A. Beaudoin: Honourable senators, Article 6 of the Universal Declaration of Human Rights provides:

> Everyone has the right to recognition everywhere as a person before the law.

This means that a human being is entitled to recognition as a person before the law simply by existing. He is a subject of law anywhere in the world.

Article 1 of the Quebec charter of rights and freedoms provides:

> All human beings are entitled to life, safety, integrity and freedom.
>
> They also have a legal personality.

Article 1 of the Quebec Civil Code provides:

> Every human being possesses a legal personality and has the full enjoyment of civil rights.

There is little United Nations' jurisprudence on the question. In Canada, we have some twenty recent decisions by the Supreme Court on the subject.

In the *Winnipeg Child and Family Services* decision of October 31, 1997, which is very revealing, Madam Justice McLachlin wrote, for the majority:

> ...Once a child is born, alive and viable, the law may recognize that its existence began before birth for certain limited purposes.

In concluding, Article 6 of the Universal Declaration of Human Rights provides therefore that everyone has the right to recognition everywhere as a person before the law.

[*English*]

HUMAN RIGHTS AND THE RIGHT TO EQUAL OPPORTUNITY IN EDUCATION

Hon. Ethel Cochrane: Honourable senators, Article 26, section 1, of the Declaration on Human Rights declares that:

> Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

These principles are being systematically violated in Canada today. In the various fields of technical and professional education, thousands of qualified students are denied admission to programs every year because of quotas on enrolment. This is primarily because of funding problems. For example, a conference of high-technology executive and government policy-makers in Ottawa was informed last week that universities would lose money by expanding enrolment in computer science and electrical engineering programs.

Paul Davenport, President of the University of Western Ontario, informed the conference that it costs the university $15,000 a year to educate each of those students, but the university can only recover $12,000 per student from tuition and provincial government funding.

Costs are even higher for Masters and Ph.D. students. At the University of Toronto, quotas exclude so many applicants that students now need a 92-per-cent average in order to be admitted to engineering and computer science schools.

More generally, accessibility to higher education based on merit is severely and increasingly threatened by the rising costs of tuition and the declining availability of grants to students. Students are now graduating with bachelor's degrees, and average debts of student loans in excess of $21,000. That debt burden is a real deterrent which is now discouraging many qualified high school graduates from pursuing higher education.

Accessibility is increasingly based on wealth rather than merit in violation of our commitment to education rights because of underfunding of the education system by federal and provincial governments.

HUMAN RIGHTS AND HEALTH AND WELL-BEING

Hon. Wilbert J. Keon: Honourable senators, it is with enormous pride that I join in the celebration marking the launch of the fiftieth anniversary of the Universal Declaration of Human Rights. The rights and freedoms espoused in the declaration have contributed to a common understanding of the fundamental goals to ensure human rights.

Article 25 provides for rights related to health and well-being. While much has been accomplished in the past 50 years toward achieving significant gains in health status, the challenge to improve health and well-being will continue to be one of the greatest challenges facing all member states in the next century.

•(1420)

There is no doubt that well-being remains a highly desirable condition for individuals and for society. However, the factors which affect our well-being continue to undergo dramatic change. Economic instability, environmental degradation, inequality, poverty, violence, addiction, cultural and racial conflict are the symptoms of a global society that is having difficulty in maintaining well-being.

The health backlog in the developing world is enormous. Nearly 800 million people lack access to health services — 264 million in South Asia alone and 29 million in the Arab states. Furthermore, nearly 1.2 billion people lack access to safe water.

Industrial countries have health problems, too. More than 300 people per 1,000 are likely to die from heart disease, and more than 200 from cancer. Nearly 2 million people are affected by HIV. Nor is there always support for the ill in the United States, where more than 47 million people have no health insurance. Health is deteriorating in Eastern Europe, where both the adult and infant mortality rates have risen in a number of countries. Malnutrition is on the rise. In addition, since 1989, over 2 million deaths can be attributed to sharp increases in cardiovascular disease and violence.

Today, we are beginning to more fully appreciate and understand the importance of socio-economic status as the single most important determinant of an individual's health. In countries all over the world, people with high socioeconomic status are healthier and generally live longer. There is, however, another dimension to this picture. When we look at the overall health of a population, the distribution of income and social status is more important than per capita income or what a country spends on health care. The narrower the spread of income in a given society, the higher will be its overall health status.

Internationally, we have made great strides in recognizing the broad determinants of health and in responding to them. However, in the face of new global trends, a clearer strategy for action is now required. This is where we Canadians, living in the best country in the world with a superb health system, must stop and count our blessings and ponder our responsibility to the developing world. We have so much to offer and so many tools, such as "telehealth," with which to do it. To paraphrase Arnold Toymbee:

> Let the 20th Century be remembered as a time when we began to promote the health and well-being of all the people in the world.

HUMAN RIGHTS AND THE RIGHT TO RELIGIOUS FREEDOM

Hon. Stanley Haidasz: Honourable senators, I join my colleagues in the chamber this afternoon in paying tribute to the Universal Declaration of Human Rights proclaimed on December 10, 1948, at the General Assembly in New York City.

As we do so, we should remind ourselves also of our Canadian Charter of Rights and Freedoms. If we read the 30 articles of the Universal Declaration of Human Rights, we will find that they are almost repetitions or similarities of clauses contained in the Canadian Charter of Rights and Freedoms. I should like to refer to the freedom of religion and conscience in clause 2(a) and (c), which are contained in the Charter. I think it is Article (3) in the Universal Declaration of Human Rights.

I bring this article to your attention because we have before us in the Standing Senate Committee on Committee Legal and Constitutional Affairs the bill that I proposed, Bill S-7, which calls for us here in this chamber to respond to the over 8,000 petitioners — mostly nurses from every province in Canada — who are asking us here in this chamber to bring in legislation to protect them against coercion in medical procedures. Often, they are forced or coerced by their superiors to take part in medical procedures that are against their conscience.

In conclusion, I pay tribute to a great Canadian, John Humphrey, a former professor at McGill University, whom I would call the father of human rights in Canada. From 1964 to 1966, he was the first director of the Department of Human Rights in the Social Affairs Committee of the United Nations. At that time, I was the parliamentary secretary to Mr. Paul Martin Sr. I was greatly edified by his tremendous efforts to expound and to promote universal human rights.

On this day, honourable senators, let us follow Professor Humphrey's example. Let us bring in legislation that always takes into consideration the rights and freedoms contained not only in the universal declaration of the United Nations but also in our Canadian Charter of Rights and Freedoms. If you read this Charter closely, you might say that its root and source is the Universal Declaration of Human Rights of the United Nations.

The Hon. the Speaker: Honourable senators, I wish to inform honourable senators that this will be the last intervention before we reach the end of this item.

[*Translation*]

HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Hon. Pierre Claude Nolin: Honourable senators, Article 9 of the Universal Declaration of Human Rights states as follows:

> No one shall be subjected to arbitrary arrest, detention or exile.

Your Honour, I would have very much liked your invited guests to remain here for my statement. It is my impression that we occasionally discover that some of those countries with which we are so keen to do business do not respect the fundamental rights we cherish and protect.

It is a pleasure for me to draw attention to the 50th anniversary of the Universal Declaration of Human Rights. Over the years of its existence, the Declaration has had a profound influence on the way the international community perceives the universality of fundamental rights. The Declaration has proven to be a great catalyst, both for individual actions and philosophical and social thoughts and for the formulation and application by governments of legislative and judiciary policies.

Despite their individual and distinct substance, the articles share the conviction that individuals and world governments must be encouraged to give precedence to the rights and freedoms necessary for the protection of human dignity, well-being and safety.

[*English*]

One recognized principle is the guarantee that no one shall be subjected to arbitrary arrest, detention or exile. In my mind, this is a fundamental freedom which has great implications for the realization of social harmony, peace of mind and well-being. There are, however, those countries in which this right is not recognized. From a knock on the door at midnight, to the kidnapping of targeted individuals or members of social groups, the global media has graphically shown us the socially devastating effect of arbitrary arrest. From the authoritarian regimes of Central America to the emerging Asian democracies, millions of people around the world live in constant fear and apprehension of such persecution.

[*Translation*]

The authors of the declaration have accomplished a remarkable undertaking, from two points of view. On the one hand, the intense moral strength with which the declaration speaks to its planetary audience is extraordinary; it is a precise and systematic affirmation of the undeniable importance of fundamental freedoms and human rights. On the other hand, it is also worth pointing out that the document has lost none of its pertinence over its 50 years of existence.

I urge the honourable senators to reflect seriously on the meaning of this day and on the challenges we will have to face in the years to come.

ROUTINE PROCEEDINGS

[*English*]

THE SENATE

NOTICE OF MOTION TO PERMIT COMMITTEES TO MEET DURING ADJOURNMENTS

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, I give notice that tomorrow, Thursday, December 11, 1997, I will move:

> That for the duration of the present session, any select committee may meet during adjournments of the Senate.

•(1430)

CANADA ELECTIONS ACT

NOTICE OF MOTION TO AUTHORIZE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE TO REVIEW PROPOSED REGULATION IN ACCORDANCE WITH THE REFERENDUM ACT, SUBSECTION 7(6)

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, I give notice that tomorrow, Thursday, December 11, 1997, I will move:

That the Standing Senate Committee on Legal and Constitutional Affairs be empowered to review the regulation proposed by the Chief Electoral Officer tabled in the Senate on December 10, 1997.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

EIGHTH REPORT OF COMMITTEE PRESENTED

Leave having been given to revert to Presentation of Reports from Standing or Special Committees:

Hon. Bill Rompkey, Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Wednesday, December 10, 1997

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

EIGHTH REPORT

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

Standing Committee on Foreign Affairs (Legislation): 97-12-09/071

Professional and Special Services	$ 2,700
Transportation and Communication	200
All Other Expenditures	1,200
TOTAL	$ 4,100

Special Committee on Post-Secondary Education: 97-12-09/072

Professional and Special Services	$ 11,500
All Other Expenditures	0
TOTAL	$ 11,500

Respectfully submitted,

WILLIAM ROMPKEY
Chair

The Hon. the Speaker: When shall this report be taken into consideration?

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

CANADIAN HUMAN RIGHTS ACT

BILL TO AMEND—FIRST READING

Hon. Erminie J. Cohen: Honourable senators, I have the honour to present for first reading Bill S-11, to amend the Canadian Human Rights Act in order to add social condition as a prohibited ground of discrimination.

Bill read first time.

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

On motion of Senator Cohen, bill placed on the Orders of the Day for second reading on Friday, December 12, 1997.

POST-SECONDARY EDUCATION

SPECIAL SENATE COMMITTEE—NOTICE OF MOTION TO EXTEND DATE OF FINAL REPORT

Hon. M. Lorne Bonnell: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(*f*) I move, notwithstanding the order of the Senate adopted on October 8, 1997, that the Special Senate Committee of Post-Secondary Education be authorized to present the final report of its study on the serious state of post-secondary education in Canada no later than Tuesday, December 16, 1997.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

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

Motion agreed to.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE VETERANS AFFAIRS SUBCOMMITTEE TO MEET DURING SITTING OF THE SENATE

Hon. Orville H. Phillips: Honourable senators, I give notice that on Thursday, December 11, 1997, I will move:

That the Subcommittee on Veterans Affairs of the Standing Senate Committee on Social Affairs, Science and Technology have power to sit at 4 p.m. on Tuesday, December 16, 1997, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

HUMAN RIGHTS IN ASIA

NOTICE OF INQUIRY

Hon. Consiglio Di Nino: Honourable senators, I give notice that on Tuesday, December 16, 1997, I shall call the attention of the Senate to the matter of human rights in Asia, with particular emphasis on China and Indonesia, and the Government of Canada's policy with respect to this matter.

QUESTION PERIOD

CANADIAN HERITAGE

ISSUANCE OF STAMP OF PROFESSOR JOHN PETERS HUMPHREY TO COMMEMORATE ANNIVERSARY OF UNIVERSAL DECLARATION OF HUMAN RIGHTS—GOVERNMENT POSITION

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, my question is directed to the Leader of the Government in the Senate. As we have heard today, we are launching the fiftieth anniversary of the Universal Declaration of Human Rights. We heard several interventions from various senators, including Senators Lynch-Staunton and Haidasz, on unique contribution made by a Canadian, Professor John Peters Humphrey, who was a native of Hampton, New Brunswick.

Recognizing the remarkable contribution of the late Professor Humphrey, who prepared the first draft of the Universal Declaration of Human Rights, would the Government of Canada give consideration to recommending to Canada Post that, during 1998, a special stamp be issued honouring that remarkable achievement by a great Canadian?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, that is a very useful suggestion made by Senator Kinsella. I congratulate and commend all those who participated in the statements this afternoon with respect to the beginning of the fiftieth anniversary of the Universal Declaration of Human Rights.

The Minister of Canadian Heritage, Sheila Copps, announced today Canada's participation in worldwide commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights which will be held beginning today, and carrying on through 1998.

I certainly will bring to the attention of those responsible my honourable friend's suggestion with respect to a commemorative stamp. I think it is a very commendable and worthwhile suggestion.

HUMAN RIGHTS

UNITED NATIONS COMMITTEES—POSSIBLE CHANGE IN GOVERNMENT POLICIES—GOVERNMENT POSITION

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, my second question relates to the United Nations Committee on Economic, Social and Cultural Rights which, as we saw in the newspapers last week, has rebuked Canada for refusing to defend Canada's report at the time established by the committee. Would the Leader of the Government in the Senate explain why the Government of Canada has adopted such an unacceptable position?

Hon. B. Alasdair Graham (Leader of the Government): I believe honourable senators would agree that the promotion of human rights abroad is a priority for Canadians and their governments. Respect for human rights is important, not only because it reflects fundamental values but because it is a crucial element in the development of stable societies.

The government spends approximately $45 million per year in support of human rights. It is one of CIDA's six priority areas for programming. It includes underwriting the International Centre for Human Rights and Democratic Development in Montreal, and so on.

With respect to my honourable friend's specific question, I will seek a more detailed response.

Senator Kinsella: Would the Leader of the Government table in the Senate the exchange of correspondence between Mr. Andrew McAllister, Canada's chargé d'affaires at the United Nations office in Geneva, wherein the Government of Canada states that "Canada is not prepared to appear before the committee next spring" — and Phillip Alston of the UN Human Rights Committee, who rejects the position of the Canadian government?

Senator Graham: Honourable senators, I do not know how appropriate such a tabling would be in such a matter, but certainly, if it is appropriate, I will endeavour to have the exchange of correspondence tabled.

•(1440)

Hon. A. Raynell Andreychuk: Honourable senators, it has been Canada's policy to be transparent on human rights issues in cooperation with United Nations committees, in particular the committee referred to by my honourable friend. We took the lead in encouraging other countries to come forward. Historically, countries that have something to hide have refused to answer the call of the United Nations committee.

Could the Honourable Leader of the Government in the Senate advise us if there has been a change of policy with respect to Canada's cooperation with UN human rights bodies?

Senator Graham: Honourable senators, there has been absolutely no change. As the honourable senator knows, Canada was instrumental in creating the position of the UN High Commissioner for Human Rights. We look forward to welcoming High Commissioner Mary Robinson to Canada some time in 1998.

Senator Andreychuk: Honourable senators, we took a particularly aggressive role in this area. Minister Axworthy has indicated he wishes to follow some principled pragmatism in foreign policy in encouraging others to adhere to the Universal Declaration of Human Rights. We have always said that we will keep our borders open for scrutiny of our affairs by other countries, in particular, by multilateral organizations. We can learn and gain from the scrutiny of other countries. In turn, we have asked other countries to do the same. This will be the first time that Canada has said that it does not wish to come forward when requested to do so by the United Nations. This appears to be a fundamental shift in Canadian policy.

Would the Leader of the Government in the Senate advise us if the government's position now is not to cooperate with these bodies when they request such cooperation? Is this not a change of policy which has been directed by cabinet?

Senator Graham: Honourable senators, I am not aware that there has been any change in any policy direction by cabinet. It would surprise me to learn that we have not agreed to cooperate.

However, I will endeavour to obtain a proper answer to my honourable friend's question.

THE SENATE

SANCTIONS IMPOSED BY INTERNAL ECONOMY COMMITTEE ON SENATOR ANDREW THOMPSON—REQUEST FOR EXPLANATION OF CIRCUMSTANCES

Hon. Herbert O. Sparrow: Honourable senators, my questions are for the chairman of the Standing Committee on Internal Economy, Budgets and Administration. I provided a copy of my questions to the honourable senators earlier in order that he could be prepared to provide answers.

My question pertains to the seventh report of the Internal Economy Committee which was presented in the Senate yesterday. Was due diligence taken before the report of the committee was tabled in the Senate?

Was Senator Thompson's office notified that such action was being taken? If so, how long before action was taken was he notified? If his office was not notified in sufficient time for him to respond, do you not consider such lack of action grossly unfair to the senator and to the Senate? Do common justice and common decency not prevail in this case?

Has Senator Thompson produced a medical certificate indicating that he has an illness? Has Senator Rompkey, as chairman, ascertained whether Senator Thompson has presented the Senate with a medical certificate? Has he in all of his interviews with the press stated at any time that Senator Thompson has presented a medical certificate indicating that he is ill?

Has Senator Thompson broken any Senate rules of which the chairman is aware? If so, which ones?

Will the actions proposed render medical certificates null and void so that, in the future, no senator will be able to claim illness as a reason for non-attendance and, therefore, senators' salaries will be deducted for days missed, or will their services be curtailed due to sickness?

Does the committee's action in this regard indicate that there are and will be separate rules for each and every senator, and that action may be taken for any reason and not necessarily based on the *Rules of the Senate*?

Senator Rompkey stated to the press yesterday that he is examining whether or not the RCMP or Revenue Canada should look into this situation. Is he suggesting that Senator Thompson has done something illegal and that the police should be called in?

The honourable senator also stated yesterday that it was impossible to get in touch with Senator Thompson's office. My question is: Have you tried? If so, when and how? Is his office not receiving mail? Is his office not receiving telephone calls?

Hon. Bill Rompkey: Honourable senators, I thank the honourable senator for his questions. I will try to answer them in order as best as I can.

The honourable senator asks whether all due diligence was taken. As far as I am concerned, the answer to the question is "yes."

The honourable senator asks if Senator Thompson was notified. His office was notified before the report was tabled in the Senate.

The report states that Senator Thompson can appear before the Internal Economy Committee and defend himself, if he believes he has a defence, or if he can offer some reasons why the action taken was incorrect. He has the opportunity to do that. I think that is fair. That opportunity was given to him.

With regard to the notice that Senator Thompson had that this action was imminent, earlier this fall when Parliament opened, Senator Kenny, who I am sure will corroborate what I am saying, as chairman of the Internal Economy Committee, met with Senator Thompson. In August, honourable senators may recall the Internal Economy Committee received a request from Senator Thompson to increase his budget. That request was denied. Senator Kenny offered to meet with Senator Thompson to discuss this and other matters, and that meeting took place. At that meeting, Senator Kenny indicated to Senator Thompson the kind of actions that were being contemplated and that Senator Kenny thought could very possibly take place. Those actions fairly accurately reflect the actions that were taken yesterday.

The honourable senator asked: Did Senator Thompson know? The short answer to that is that he did know how the Senate, certain members of the Senate at any rate, felt about him and what actions were being contemplated as long ago as August or September. The short answer is that Senator Thompson was notified.

Does Senator Thompson have a medical certificate? I understand that he has tabled medical certificates with the Senate. I think that is generally known both by members of this Chamber and by the press.

I point out that our report made no mention of medical certificates. Our report simply stated that it is quite obvious that Senator Thompson has not attended, and indications are that he will not attend and, if that is the case, then clearly Senator Thompson does not need the support services that the rest of us have to carry out our duties here in the Senate. He is not here to carry out his duties. The indication we have is that he will not return to carry out his duties. We felt that was the basis on which his support services should be taken from him.

•(1450)

Did Senator Thompson break any Senate rules? When we take the oath of office, the proclamation requires that we attend. We are all here in attendance in accordance with that proclamation. I believe that is a sound basis on which to make a decision.

However, our decision was simply, and I repeat: Senator Thompson has not been in attendance. There is no evidence that he intends to come. As a matter of fact, I should relate that, in that same conversation with Senator Kenny this fall, Senator Thompson indicated that he intended to come; that his period of absence was coming to an end and that he intended to attend the Senate. However, he has not attended the Senate.

All the evidence that we can muster supports the fact that he has not attended and that he does not intend to come. On that basis, we saw no reason why he should continue to receive support services.

Does it make medical certificates null and void? No, it does not. Are there separate rules for individual senators? No, there are not. Did we state that the RCMP or Revenue Canada should be called in? No, we did not, at any time. I repeat: I did not mention the RCMP to anyone; neither did I mention Revenue Canada to anyone at any time. I hope that will be clearly reported. That clearly is not the case.

Senator Sparrow: Honourable Senator Rompkey, you stated yesterday that it was impossible to get in touch with Senator Thompson's office. My question is: Have you tried? If so, when and how? Is his office not receiving mail or telephone calls?

Senator Rompkey: The answer is that, clearly, you can get in touch with Senator Thompson's office, but you cannot get in touch with Senator Thompson. Some senators have tried, and I believe the whip will confirm that he has tried. He did have a phone number for Senator Thompson at one time but, when he tried to call that number, it had been disconnected. The present telephone number is unlisted and the whip was unable to reach Senator Thompson. There have been various attempts on this side of the chamber to reach not his office but Senator Thompson himself. All efforts came to no avail.

Senator Sparrow: As a supplementary question, how would you expect to contact Senator Thompson if you did not contact him through his office? His office tells me that there was no contact made by you by telephone, either on the answering machine or in person. Do we in this chamber deal only by hearsay — "So-and-so said," and "Sometime ago Senator Kenny did this." ?

Was Senator Thompson notified officially at that time, or are we dealing strictly with hearsay? Was there any written notice to indicate to Senator Thompson that the services that he is receiving may be suspended?

The honourable senator mentioned that Senator Thompson has broken the rules. I ask the question again: Which rules are we talking about, and I refer to the *Rules of the Senate*, not the oath of office?

Nor did the honourable senator answer the first question. How long before you presented the motion or the report in the house was notification given to Senator Thompson's office? Was it at the same time?

Senator Rompkey: It was not at the same time. It was as soon as I could before the report was presented in the chamber.

With regard to when official notification was given, that notification was given yesterday, but I think it is fair to say that when Senator Kenny met with Senator Thompson last fall, he did so in his official position as Chairman of the Standing Committee on Internal Economy, Budgets and Administration. I hope that that has answered the honourable senator's question.

HUMAN RIGHTS

INTENTION OF PRIME MINISTER TO RAISE ISSUES WHILE VISITING CENTRAL AND SOUTH AMERICAN COUNTRIES— GOVERNMENT POSITION

Hon. Consiglio Di Nino: Honourable senators, every day, before we begin, we offer a prayer to serve the cause of peace and justice in our land and throughout the world. It is in this spirit that I should like to ask my question to the Leader of the Government in the Senate. He informed us that the Heritage Minister has announced our participation in the worldwide commemoration of the fiftieth anniversary of the Universal Declaration on Human Rights.

Since our globe-trotting Prime Minister is leaving the country in January to visit South America, is it the intention of the government to take the issue of human rights seriously and raise these issues in the countries he is visiting, namely Mexico, Brazil, Argentina and Chile?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, it is my understanding that whenever it is applicable and appropriate, the Prime Minister always raises these matters.

Senator Lynch-Staunton: Behind closed doors.

Senator Di Nino: Honourable senators, I remind the Leader of the Government in the Senate that, in Red Book I, the Liberal government promised to publish the information gathered by the Foreign Affairs Department on human rights in other countries. For a reason not yet explained to us, the government has decided not to do that.

Prior to the Prime Minister's visit, will the government table in Parliament the assessment done by the department for each of the countries which the Prime Minister will visit during this trip?

Senator Graham: Honourable senators, I certainly will ask the appropriate authorities if that is possible.

LINKAGE OF ISSUES TO PROVISION OF AID—
GOVERNMENT POSITION

Hon. Stanley Haidasz: Honourable senators, a few days ago, the Minister of Foreign Affairs made a speech at the University of Ottawa, my alma mater, stating that human rights must — and I underline "must" — be an integral part of our foreign policy and the consideration in any relationship that Canada has with another country.

I therefore ask the Leader of the Government in the Senate how his fellow ministers can reconcile this order by their senior minister with many of the actions that are taken by their departments and even the ministers visiting these countries, spending, giving great aid to them, even giving them sums of money, our hard-earned tax dollars? How do these ministers reconcile that with the comments of the Foreign Affairs Minister?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, it would be the hope of the Government of Canada, in providing aid to other countries, that it is not going to governments but to people, to needy people, to starving people, to ill people.

Senator Haidasz: And for limousines to drive their ministers.

Senator Graham: That is your view, Senator Haidasz, and I have my view. Canada is a leader among world nations in helping the poor and the disadvantaged of this world. When it comes to aid to the less fortunate of this world, we as a country and we as citizens of Canada can be very proud.

Senator Lynch-Staunton: Like the Three Gorges Dam, you will flood them out.

APEC SUMMIT—DOMINATION BY TRADE
AND ECONOMIC ISSUES—GOVERNMENT POSITION

Hon. Donald H. Oliver: Honourable senators, Canada has an enviable record for speaking out against human rights abuses and violations in countries around the world. An excellent example would be Canada's leading role against apartheid and the past trade embargo against South Africa.

However, our activities, at the recent APEC summit, seem to indicate that we are now putting trade and dollars ahead of human rights. Not only was there very little mention of human rights at that meeting, but we now learn that Chief Gail Sparrow had her welcoming speech cancelled because it mentioned human rights. Can the Leader of the Government in the Senate explain this censorship?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, it would be an inaccurate assumption that Chief Gail Sparrow had her speech cancelled on the grounds that it mentioned human rights.

•(1500)

My understanding is the matter was discussed, and that Chief Sparrow's remarks, in the international forum in which they were to be given, were judged to be inappropriately lengthy. Given that they were operating under certain time constraints, she refused to modify the length of her speech, and that is why they ran into difficulties at that time.

Senator Oliver: As a supplementary question, *The Vancouver Sun* ran a story, the headline of which read: "BC chief wasn't censored: PMO." Jennifer Lang, an official of the Prime Minister's press office stated that:

> Agreement was not reached on cutting down the remarks, therefore the entire element was removed from the program.

Chief Sparrow replied:

> They directed me to take this out, take that out. They're lying and I don't appreciate that.

Would the Leader of the Government tell us if the decision to cancel her speech was made by a civil servant or by a political staff member; and can we be told the name of the individual who made the decision?

Senator Graham: I will certainly endeavour to get that information, if it is available.

However, I insist that there were no human rights implications.

ANSWERS TO ORDER PAPER QUESTIONS TABLED

FOREIGN AFFAIRS—OECD DISCUSSIONS ON MULTILATERAL AGREEMENT ON INVESTMENT—MEMBERS ON CANADIAN DELEGATION

Hon. Sharon Carstairs (Deputy Leader of the Government) tabled the answer to Question No. 78 on the Order Paper—by Senator Spivak.

ENERGY—NATIONAL GALLERY OF CANADA—CONFORMITY WITH ALTERNATIVE FUELS ACT

Hon. Sharon Carstairs (Deputy Leader of the Government) tabled the answer to Question No. 33 on the Order Paper—by Senator Kenny.

ORDERS OF THE DAY

SAGUENAY-ST. LAWRENCE MARINE PARK BILL

THIRD READING

Hon. Mary Butts moved the third reading of Bill C-7, to establish the Saguenay–St. Lawrence Marine Park and to make a consequential amendment to another Act.

Motion agreed to and bill read third time and passed.

INCOME TAX CONVENTIONS IMPLEMENTATION BILL, 1997

THIRD READING

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

He said: Honourable senators, sometimes the theory of the Senate as a chamber of sober second thought operates to present a very clear illustration of its benefits as a safety valve on legislation passed too hastily in the other place.

After the passage of Bill C-10 in the other place and after second reading in the Senate, but before hearings of the Standing Senate Committee on Banking, Trade and Commerce which reviewed Bill C-10, several senators received representations of concern from members of the other place as well as aggrieved taxpayers with respect to the Netherlands-Canada treaty.

Apparently, Dutch farmers who sold their farms in Holland and bought farms in Canada are concerned about the tax treatment in Canada as it relates to tax treatment in the Netherlands.

This concern was brought to the minister's attention during the committee hearings. I have here a letter requested by the committee and written to the Honourable Michael Kirby, Chairman of the Standing Senate Committee on Banking, Trade and Commerce. I should like to read this letter in full and then table it, with the Senate's consent. The letter is dated December 9, 1997.

Dear Senator Kirby:

I am writing to you with respect to Bill C-10, which is about to be considered by the Standing Senate Committee on Banking, Trade and Commerce.

As you know, the bill would implement five treaties — with Denmark, Iceland, Kazakhstan, Lithuania and Sweden — and protocols to our tax treaties with the United States and the Netherlands. The protocol to the U.S. treaty is the most important of these measures as its implementation will relieve Canadian residents receiving U.S. social security benefits from the imposition of a 25.5 % flat rate U.S. withholding tax. This will be replaced by Canadian tax at rates that take the recipients' income levels into account. Because the protocol takes effect from January 1, 1996, Revenue Canada will be able to begin paying tax refunds to thousands of lower-income Canadians shortly after the protocol is ratified. It is for this reason that enactment of Bill C-10 before the Christmas break is essential.

I understand that some members of the Committee believe that an aspect of the protocol to the Netherlands tax treaty is retroactive in that it would permit the revenue authorities of each country to provide assistance to the other in collecting tax claims of the other. This would apply to tax claims finally determined after the date that is 10 years before the date on which the protocol enters into force (i.e., 30 days after exchange of instruments of ratification). I would point out that, in fact, this measure is not retroactive as it does not institute a change which modifies the tax law with application to earlier dates. Rather it provides a change which applies only to the collection of taxes in the future. I wish to emphasize that the rules under which those taxes were determined in the past are not changed by the protocol and that assistance in collection would be provided only where all administrative and judicial rights of a taxpayer to restrain collection in the applicant state have lapsed or been exhausted.

Here is the signal and, I think, the most significant portion of the letter. The final paragraph reads:

> In view of the importance to thousands of lower-income Canadians of early passage of this bill, I am prepared to assure you that the government will not proceed with the ratification of the protocol to the Netherlands tax treaty until the Committee is satisfied with respect to the article on mutual assistance in collection of taxes.
>
> Thank you for your help in this important matter.
>
> Sincerely,
> The Honourable Paul Martin.

Honourable senators, in effect, we have received an undertaking from the Minister of Finance to not proceed with the Netherlands-Canada portion of the treaty asto ratification until it is reviewed another time by the Standing Senate Committee on Banking, Trade and Commerce. In this respect, the chamber has done its work well, and I would now commend the approval at third reading of Bill C-10.

Honourable senators, I should like to table the letter with the clerk.

The Hon. the Speaker: Is leave granted for the tabling of the letter?

Hon. Senators: Agreed.

Hon. John Lynch-Staunton (Leader of the Opposition): Will that letter be included in the *Journals of the Senate* if it is tabled? It should form part of the record.

The Hon. the Speaker: Does the Senate wish to order that it be included in the Journals?

Hon. Senators: Agreed.

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

•(1510)

Hon. Nicholas William Taylor: Honourable senators, today I am pleased to hear that the minister will be referring this question back to the committee chaired by Senator Kirby. However, I wish to be abundantly clear and ask whether, after the Standing Senate Committee on Banking, Trade and Commerce has considered the letter, will the report then be considered by the Senate as a whole? If some senators are unhappy with the conclusions reached by the Banking Committee, then the Senate would have an opportunity to comment. Will the matter be a fait accompli as soon as the letter is presented to Senator Kirby's committee, or will it come back to this chamber?

Senator Grafstein: Honourable senators, I find myself in a difficult position in having to give an undertaking on behalf of the chairman of a committee. However, I will undertake to inform Senator Kirby of my honourable friend's request. In addition, I will ensure that my honourable friend is notified of the meeting of the Banking Committee so that he can attend as a non-voting member. I will use my best efforts with the chairman of the Banking Committee to ensure that the report comes back to the chamber for further consideration. I believe, in due course, it will in any event.

Bill read third time and passed.

[*Translation*]

ROYAL ASSENT

NOTICE

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

RIDEAU HALL

December 10, 1997

Sir,

I have the honour to inform you that the Right Honourable Antonio Lamer, Chief Justice of the Supreme Court of Canada, in his capacity as Deputy Governor General, will proceed to the Senate Chamber today the 10th day of December, 1997, at 4 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*]

CANADA PENSION PLAN INVESTMENT BOARD BILL

SECOND READING—DEBATE CONTINUED

On the Order:

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

Hon. Philippe Deane Gigantès: Honourable senators, I yield the floor to Senator St. Germain.

Hon. Gerry St. Germain: Honourable senators, in rising today to take part in the second reading debate on Bill C-2, I wish to focus my remarks primarily on the devastating effect this bill will have on small business in Canada, the self-employed, and attempts by the private sector to create employment. However, before I deal with this matter specifically, I wish to say a few words generally about what this government is doing to the retirement planning of Canadians.

For many years, the retirement plans of Canadians have taken on three separate and distinct forms. First, there is the Old Age Security paid to seniors no matter what their level of income. Combined with that is the Guaranteed Income Supplement paid to our poorest seniors. Second, there is the Canada Pension Plan. Finally, the third part of the scheme is the Registered Retirement Savings Plan.

Just what does the government propose to do to these three parts of our pension program? It proposes to scrap the OAS and the GIS, which is the Old Age Security and the Guaranteed Income Supplement, and replace them with a "means tested" pension. The Liberal Party, when I was in the other place, spoke of the meanspirited nature of means testing, and here we are, honourable senators, proceeding in that direction.

Those who are reaching their senior years and have paid taxes all their lives will no longer be eligible for what we used to call the "Old Age Pension."

With regard to the RRSP, this part of the pension program has been brought under constant threat since the arrival of the Liberal government in the fall of 1993. Every year around budget time, we are treated to Mr. Martin, the Minister of Finance — the same person who brought us Bill C-2 — threatening to reduce the amount that can be contributed as a tax-delaying device or, as he did last year, forcing early withdrawal of funds from these plans. This penalized those who had planned and saved for their retirement future, and provided the federal government with an unwarranted tax grab.

However, it is with their change to the CPP that this government will hurt the fragile economic recovery they claim to support. If the government has its way — and we on this side of the Senate are the only ones who are left standing in its way — Bill C-2 will pass later this month, raising CPP contributions by 70 per cent. This proposed premium hike will suck $11 billion a year out of Canada's economy over the next seven years.

Honourable senators, no matter which way the government cuts it, premium hikes are payroll taxes, and payroll taxes make it more expensive for employers to conduct business. They thwart expansion plans and kill any plans for increased employment for those at the low-income level and the poor of our society.

One of the authoritative studies on the effect of payroll taxation in Canada was published in *Canadian Business Economics* in 1995. Professors Di Matteo and Shannon from the Department of Economics at Lakehead University concluded that these taxes do have a negative impact on employment. Their conclusion was based on the following reasons:

> A payroll tax levied on employers lowers labour demand... a payroll tax levied on employees will decrease labour supply. In either case the employer's wage costs will increase while the wage received by workers will fall. Employment will decline in either case.

When they applied their conclusions to wage costs and the employment rate, they stated that a 1-per-cent rise in the average tax rate will lead to a .56-per-cent rise in wage costs and a .32-per-cent decline in employment. Therefore, as a result of the passage of Bill C-2, employers will see their wage costs rise dramatically while employment falls.

What is this government trying to do? Does it not believe that a 9.1-per-cent unemployment rate is high enough? That is basically where it sat for the last three and a half to four years. Does the government want the rate to go even higher? I believe so. Based on the choice the government has made, it is obviously working towards higher unemployment.

If the government is to insist on having its way, please listen to those who speak on behalf of the business people and the self-employed, and reduce income taxes and employment insurance taxes. I recognize that, recently, premiums were reduced by a few cents. However, I am speaking about a real, meaningful reduction that will help business maintain its struggle to increase productivity and provide the employment opportunities that all lower-income and middle-income Canadians want. I am talking here of our young people who are graduating from our educational institutions. They deserve the same chances and opportunities enjoyed by many of us, even those who came from dirt poor beginnings in places such as Manitoba and other places.

•(1520)

The Canadian Federation of Independent Business is clear in its advice to the government. For the most part, its proposals reflect the philosophy of the Progressive Conservative Party of Canada. The CFIB stated on June 12, 1996, in a letter to David Walker, Chairman of the CPP Review Committee, that increases in CPP premiums of as high as 10 per cent would massively disrupt, and be disruptive to, small business finances and employment levels.

Basically, the members of the Canadian Federation of Independent Business are the largest job creators in this country. The CFIB has designed a 10-point plan to deal with the Canadian retirement income plans. Among other things, they advocate the following: The government recognized, first, the importance of the RRSP by encouraging people to plan and save for retirement; second, that the CPP reforms should combine reducing benefits

with a very gradual increase in premiums; third, that premiums should not be dramatically increased; and, fourth — and most important for our purposes — that existing federal and provincial payroll taxes should be reduced to offset CPP premium increases.

The CFIB reiterated that on numerous occasions it has advised federal and provincial leaders that the premiums are already too high, and that they are a major impediment to job creation. The Canadian Federation of Independent Business also concluded that the double whammy of employment insurance and CPP premium increase is totally unacceptable.

I know, honourable senators, that the government will not necessarily listen to us on this side, but surely it must listen to those who are on the front lines of job creation, namely, small business. The proposals we have before us now for change in the CPP program will hurt small business and those who are self-employed.

Honourable senators, the changes before us will hurt working Canadians. They will also hurt those Canadians who want to work but are not working now. The increase of premiums from 5.5 per cent to 9.9 per cent kills jobs and means less take-home pay for those who are working. Under this legislation, CPP premiums are retroactive for 1997, meaning every employee will pay up to $24 extra this year. Self-employed Canadians who earn $35,000 will pay $1,843 in premiums in 1997 under the status quo, but under Bill C-2, their premiums will increase by $1,276, for a total of $3,119. These Canadians contribute twice: the employer's portion as well as the employee's portion.

Honourable senators, Bill C-2 is not a good solution to the pension issue which faces Canadians. I look forward to continued discussions in committee. I hope that the government will allow the hearings to continue long enough so that all diverging viewpoints can be heard on this issue, and we can pursue the aspects of how the Investment Board will be established. We will want information regarding the selection of the 12 members who will sit on that board on the recommendation of the minister. As Canadians, we will endeavour to set up a method of examining those people who will sit on this board so that we will not need to experience the pure patronage appointments that have taken place in the past, not only on that side of the house, but also on this side.

I believe these types of appointment are wrong. We must rise above such dealings. Do you wonder why we are being criticized all over the country for the actions we are taking? Do you wonder how this pure patronage has taken place? During election campaigns, parliamentarians often say that they will never, ever participate in this type of activity. Yet, regardless of what party they are from, the moment prime ministers or premiers are sworn into power, hey presto, their own people — be they hacks, flacks and all other types — are suddenly parachuted into top jobs. That really aggravates me! I am sorry to say that I most likely fit into one of those categories.

Having said that, honourable senators, if we do not do anything else, I think it is time that we consider rising above these patronage type of appointments and begin to scrutinize them, and allow the public to participate and to give their input, in order to arrive at what is best for all Canadians.

Hon. Michael A. Meighen: Honourable senators, I rise to take part in the debate on Bill C-2. As honourable senators know, this act has as its main purpose the complete revamping of the Canada Pension Plan. One feature by which this is to be done is the creation of the Canada Pension Plan Investment Board. The bill sets out the powers and responsibilities of this board.

Anyone's review of clauses 1 through 57 of the bill establishing the board would lead them to believe that there could be improvements brought to certain areas concerning the board, and especially to the question of its accountability to the people of Canada.

Before I deal in some depth with the clauses which establish the board, I want to speak in general terms about the legislation before us. Indeed, I adopt as my own words much of what was said in the excellent speeches given by Senator Tkachuk, Senator Bolduc, Senator Stratton and Senator St. Germain.

There is much to say about this bill, much which can be complimentary, but a great deal which can be constructively critical. As Senator St. Germain said, perhaps the government will not listen to us, but perhaps they should listen to the Canadian people before we rush through such an important piece of legislation.

As Senator St. Germain said, the changes to the CPP contained in Bill C-2 represent changes to just one part of Canada's public pension system: the other parts being the Old Age Security, the Guaranteed Income Supplement and Registered Retirement Savings Plans. It follows, therefore, that Bill C-2 cannot be examined in isolation from the changes which are either proposed or have already taken place in these other parts of our pension system in Canada.

Since this government came to power, each February, around budget time, rumours abound concerning possible changes to the limits Canadians will be able to contribute to their RRSPs, thus postponing tax on the income contributed. Last year, the age by which the moneys had to be withdrawn from RRSPs was lowered from 71 to 69. I only hope all 69-year-old Canadians have a good memory and will have this matter drawn to their attention. Honourable senators know that if those Canadian seniors do not do so, they will suffer a severe penalty indeed.

For those involved in small business, the engine of our economy, and those who are self-employed, the RRSP is the major source of retirement income. The government does not seem to understand that if the small business owner is to take advantage of the RRSP, there must be some long-term certainty in the rules which govern both contributions and withdrawals.

Changes to these rules should not occur just because the government is hungry for tax money. Today's tax hunger by the government could result in real pain being inflicted in the future on those who rely on RRSPs for the bulk of their retirement income.

The government also proposes to eliminate the OAS-GIS scheme with what it calls the "Seniors Benefit." This benefit, which will be geared to income, will result in all but the poorest senior citizen receiving less money in their retirement. Through the changes proposed to the CPP, the new Seniors Benefit and the continuing uncertainty regarding RRSPs, this government has managed to affect negatively virtually everyone in Canada.

The imposition of premium hikes in CPP act as a payroll tax, and will certainly kill job creation — jobs which are desperately needed by Canada's young people. These premium increases also hit the self-employed and the small business person by costing them more to stay in business. These increases act as a disincentive to either expansion or hiring more workers because they will suck an estimated $11 billion out of our economy over the next seven years.

I will leave it to others to describe similar negative effects these changes will have on women and on those who will become seniors in the next few years. That will include many of us, I dare say.

•(1530)

Suffice it to say that these changes will hurt virtually every Canadian. I agree that our public pension retirement schemes in Canada need to be changed, but such changes as are proposed here could have been accompanied by tax relief and/or meaningful reductions in the mployment insurance premiums. The present plan by this government for change will simply hurt too many Canadians.

Honourable senators, I would like to spend the remainder of my time talking about the Pension Plan Investment Board. I argue that these provisions do not offer sufficient protection to Canadians with regard to the functioning of the board, nor do they give the board the flexibility it will require to obtain maximum return on the dollars — yours and mine — that it invests.

While clause 3 of the bill establishes the Investment Board to be managed at arm's length from the government, clause 57 gives the Governor in Council the power to make regulations subjecting the board to all or some of the investment rules set out in the Federal Pension Benefits Standards Act which governs other federally-regulated pensions. I have concerns with any potential government interference with the management and investment practices of a fund which will, in a very few years, accumulate over $100 billion in assets.

Government interference in the investment practices of public pension plans is not unknown, honourable senators, either here in Canada or in the United States. The example of institutional investor activism most often cited in the United States is that of the California Public Employees Retirement System, better known by its acronym CalPERS. It has been described by Thomas G. Donlan, editor of *Baron's* as "the biggest and most impetuous of public pension funds." Mr. Donlan states:

> One of these days, we hope the participants in CalPERS will wise up to the way the investments they own are being used for political purposes. Any short-term benefit the State receives from targeted investment is outweighed by the long-term risks CalPERS assumes.

In Canada, the classic example of a pension fund being used to further political objectives is, of course, provided by the Caisse de dépôt et de placement du Québec. Ed Waitzer, then chair of the Ontario Securities Commission, in an article published in 1994, cites the investment initiatives of the Caisse in its financing of the 1989 takeover of Steinberg Inc. as an example "of the use of public savings to further public, i.e., political objectives, often at the expense of a satisfying economic return."

Honourable senators will also recall that then premier Parizeau told us, after his failed referendum bid, that he had given orders to the Caisse and to Hydro-Québec to accumulate a fund of approximately $19 billion to protect the Quebec bonds and/or the Canadian dollar in the event of a run on those should the referendum succeed.

Senator Ghitter has spoken to many honourable senators about his experience in Alberta when the Alberta Heritage Trust Fund was set up. He told us that there was an initial move to see that that fund reported only to cabinet. Thanks to the efforts of Senator Ghitter and some of his colleagues, amendments were made and the fund reported to a committee of the legislature where at least it was subjected to annual public scrutiny.

Senator Taylor: The Liberals had something to do with that too.

Senator Meighen: Once in a while lightening strikes, Senator Taylor, and they see the light. I am glad you supported it. I knew there was a reason for Senator Taylor being here. I congratulate him. for that.

In my opinion, honourable senators, a fiduciary's main obligation should be to act to increase the assets of a plan, not to further some political or personal goal which conflicts with the duty to increase the value of the fund.

Honourable senators, the government has created, at least on paper, a pretty good system for appointing the board. An advisory panel of experts chosen by the provinces will prepare a list of suggested candidates for the minister's consideration. That is the theory. Let us look at the reality.

The problem is that the minister will be under no obligation whatsoever to appoint anyone whose name appears on that list. Moreover, the government is under no obligation to have such a panel to advise on future board appointments. The operative word in this bill is "may," not "shall," and we know what happens in those cases.

I do not doubt that, on this first round of appointments, most, if not all, of the chosen members will be of the very highest calibre. This, of course, will be the case because of the intense scrutiny that the government knows it will be under. However, given a few years and reduced public scrutiny, this may not be the case. The temptation will arise to appoint those who follow the minister's marching orders, regardless of their competence. Bill C-2 does not require that those appointed to the board have any knowledge whatsoever of financial matters. Rather, clause 10 of this bill gives the minister a vague general guideline that there be "a sufficient number of directors with proven financial ability or relevant work experience." Surely, honourable senators, the definition of "a sufficient number" is entirely up to the minister, as is the definition of "financial ability" and "work experience." After all, if running a bait and tackle shop qualifies you to head the Freshwater Fish Marketing Board, then balancing your cheque-book must give you the proven financial ability to sit on this board.

Given the magnitude of the funds to be entrusted to this board — and I am sure Senator Eyton would agree with me that it is a large sum of money — it is essential that those who join it be there because of what they know and not who they know. They should be chosen not simply because they are supporters of the government of the day.

Another issue, honourable senators, is the transparency of the board and how it will be or will not be accountable to Parliament and to the stakeholders — you, I, and all Canadians. In order to ensure that Canadians obtain the transparency they deserve from the CPP Investment Board, I believe that if the Auditor General is not the auditor of this board, as he has requested, he should at least have a mandate to perform periodic special audits to ensure that the board is properly managed, and those audits should be made public.

Honourable senators, the government has made two very welcome amendments, largely, I might add, as a result of interventions by the Progressive Conservative critic in the other place. First, the Auditor General will at least have access to the books of the board so that he can perform his overall audit of the fund. However, honourable senators, this is to be a "do-the-books-add-up?" type of audit and not a "value-for-money" audit.

Second, as originally drafted, the bill did not require that there be any special audit or examination of the way the board carries on its affairs. After voting down a Progressive Conservative amendment in committee to require such a special audit every five years, the government, as has happened in the past, changed its mind at report stage, adopting a similar measure but with a six-year time-frame. The problem, however, is that there is no requirement that it be the Auditor General who does these special audits, and there is no requirement that the audits be made public. The results of any special audit should be made public and the board should be required to report to Parliament annually.

My colleagues in the other place have also flagged as a concern the way whoever is chosen as auditor is hired or fired. In the private sector, as many senators would know, it is not the board who fires an auditor, and it is not senior management; it is the shareholders at a special shareholders meeting. In the private sector, it is the outgoing auditor who has the final word, as the incoming auditor must request a letter from the outgoing auditor asking for his or her version of why he or she was fired or why he or she quit. However, if this board's auditor starts to smell something fishy, he is gone. By allowing the board to fire the auditor on a whim, the government is putting the auditor's independence at risk.

•(1540)

The board should be subject to the Access to Information Act.

The Hon. the Speaker: Honourable Senator Meighen, I hesitate to interrupt you, but the 15-minute time period has elapsed. Are you requesting leave to extend?

Senator Meighen: Yes, honourable senators.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

Senator Meighen: I am very grateful to this end of the Senate. Thank you, honourable senators.

The board should be subject to the Access to Information Act. Subjecting the board to this act would not require it to make public its investment strategy, as the existing law exempts this kind of information, but it would subject the board to full and proper scrutiny — everything from who is being hired on consulting contracts through to what studies are being prepared on various issues. The Auditor General's recent exposé on the spending and lunching habits and internal strife at the Canada Labour Relations Board shows us all why it is important that boards be accountable.

Honourable senators, will the board be accountable to Parliament? The answer is no. Parliament will not approve its budget. Parliament will not approve the selection of the board of directors. Parliament will not hire the auditor or have any inherent right to question the board. The only thing that Parliament will get is the annual statement.

Will this board perhaps be accountable to the provinces? Here again the answer is no. Aside from choosing the panel that recommends the names that may or may not be chosen, the provinces will have no say whatsoever. Indeed, they could be horrified by some of the people the minister puts on the board but would not be able to do anything about it. There is a requirement that the minister consult first on appointments — not listen, but consult. Can you imagine the conversation? The Finance Minister says to the provinces, "Sheila Copps wants out of politics, and I want to put her on the board. What do you think?" The provinces say, "Please don't." The minister says, "Too bad. Consider yourselves consulted."

Will this board be accountable to the millions of Canadians who either pay premiums or receive benefits? No, honourable senators, it will not. While there is a requirement that the board meet once every two years in each province, allegedly to allow Canadians to comment on the board's most recent annual report and answer questions, Canadians will not have the right to have any question answered unless the board chooses to answer it, nor can they go to Access to Information to get those answers.

Frankly, honourable senators, this is at best window-dressing — perhaps good window dressing, but window-dressing nonetheless. Indeed, for all intents and purposes, this is a board with control of more than $100 billion, the largest sum of money in the country, and it will report only to the Minister of Finance. He or she picks the board. He or she alone fires the board. Some finance ministers will be too preoccupied with tax reform or even perhaps a leadership race to even look at the board, thereby giving the board a free rein. Some will follow a proper balance between non-interference and proper management. Some ministers will use it as a toy for economic re-engineering. However, in all cases, the board will report only to the minister and not to Parliament.

Finally, in order to ensure a maximum return on its investment dollars, the government should remove the 20-per-cent foreign property investment rule. In support of this proposition, honourable senators, I can quote no more distinguished an authority than Mr. Keith P. Ambachtsheer, president of Keith P. Ambachtsheer & Associates Inc. Mr. Ambachtsheer, as many of you know, has advised many of the world's major investment retirement systems on issues related to governance, finance, and investments. Indeed, he was an advisor to the CPP working group on CPP investment policy and the author of *Moving to a "Fiduciary" CPP Investment Policy: Two Possible Paths*. He indicates:

> The 20 per cent Foreign Property Rule (FPR) is already impeding a number of large Canadian investment institutions from achieving the levels of diversification and liquidity they would like. Within 10 years, the CPP Investment Board would be facing similar difficulties. Fortunately, there is a simple solution. The FPR should be removed from the Income Tax Act.

I will cite one other comment from Mr. Ambachtsheer which underlines the importance of governance and should, I hope, make us all reflect on the absence of what is required in terms of governance for this investment board. Mr. Ambachtshere says this:

> Just as the three things which matter most in real estate are "location, location, location," so the three things which matter most in the effective management of pension funds are "governance, governance, governance."

Honourable senators, it seems to me that we have here a case of no governance, no governance, and no governance.

When this bill is referred to the Senate Banking Committee, as I hope it will be shortly, I will look forward to discussing amendments, so desperately needed, to this proposed legislation.— I have five points of good governance I shall measure any proposed amendments against. I will close with these five points: A clear, enforceable, legal requirement to invest CPP assets solely in the best interests of CPP stakeholders, the people of Canada; a clear chain of accountability through the CPP governance structure to the CPP stakeholders; a perception by CPP stakeholders that the CPP governance structure is there to look after their best interests; a clear, unfettered path to accessing the best strategic and tactical investment thinking and expertise available to set and implement the CPP fund's investment policy; and finally, flexibility in being able to anticipate and respond to new circumstances in an ever-dynamic world.

Honourable senators, this is far too important to the future of the people of Canada to rush it through. I hope this body will do its duty, as it has done so often in the past, and take the necessary time to ensure that the legislation Canadians are governed by is good legislation, not just jerry-built legislation pushed through in order to meet an imaginary deadline.

Senator Gigantès: Am I to assume that the honourable senator believes that, if there is a government other than that of the honourable senator's party, such a government will not have the best interest of the people of Canada in its policies? Why does the honourable senator assume that a government not of his party will not have the best interests of the people of Canada in mind when doing whatever must be done with the CPP?

Senator Meighen: I could say "experience," senator, but I will not.

Senator Gigantès: I know you have experience in mismanagement, but —

Senator Meighen: The legislation that is before us is, as I said at the end of my speech, jerry-built. I do not think it takes into consideration the best interests. I think it could be changed for the better. I agree that CPP needs to be changed, but I do not think this does the full job. By not doing the full job, I do not think it fully takes into account the best interests of Canadians.

Senator Gigantès: Do you think it would be more in the interests of Canadians to be able to invest more money in some Asian tiger or Latin American country or a scheme like Bre-X and lose all the money of the stakeholders?

Senator Lynch-Staunton: CANDU reactors to China.

Senator Gigantès: How many of your friends invested in Bre-X and lost all their money? The assumption is that you guys know better, and you do not. You have fallen on your face many times.

Senator Lynch-Staunton: Tell us about Dome Petroleum.

Senator Meighen: I do not think that question deserves an answer.

Senator Gigantès: It deserves an answer, but you do not want to give one because you have friends who have made people suffer because they mismanaged, not out of dishonesty, just stupidity.

Senator Meighen: Unfortunately, once again, senator, you do not know what you are talking about.

Hon. Mira Spivak: Honourable senators, I would like to adjourn the debate.

The Hon. the Speaker: It was moved by the Honourable Senator Spivak, seconded by the Honourable Senator Beaudoin, that further debate be adjourned to the next sitting of the Senate.

•(1550)

ALLOTMENT OF TIME FOR DEBATE—NOTICE OF MOTION

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, there have been some discussions with the opposition about allocating a specified number of hours for the second reading debate of Bill C-2. Unfortunately, as yet, we have not been able to reach a mutually satisfactory agreement. Consequently, I wish to give notice that, on Thursday December 11, 1997, I will move:

> That, pursuant to Rule 39, not more than six hours of debate be allotted to the consideration of the motion by the Honourable Senator Kirby, seconded by the Honourable Senator Joyal, P.C., for the second reading of Bill C-2, An Act to establish the Canada Pension Plan Investment Board and to amend the Canada Pension Plan and the Old Age Security Act and to make consequential amendments to other Acts.
>
> That, when debate comes to an end or when the time provided for the consideration of the said motion has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the said motion; and
>
> That any recorded vote or votes on the said questions shall be taken in accordance with the provisions of Rule 39(4).

The Hon. the Speaker: I would remind the honourable senator that there was a motion to adjourn debate by the Honourable Senator Spivak, which I read. Is the honourable senator debating that motion or is this notice of motion, separate from the motion to adjourn?

Senator Lynch-Staunton: Debate has been adjourned.

The Hon. the Speaker: I had not yet asked if it is agreed.

Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Now there is a notice of motion before the house.

POINT OF ORDER

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, I would refer to rule 39(1) of the *Rules of the Senate* which governs the notice of motion which has just been given, or which the Deputy Leader of the Government is attempting to give. The pertinent part of this rule states:

> ...the Deputy Leader of the Government in the Senate, from his or her place in the Senate, may state that the representatives of the parties have failed to agree to allocate a specified number of days or hours for consideration...

In my conversations with the Deputy Leader of the Government, the specification of number of days or hours of consideration was never considered. I have assured the Deputy Leader of the Government that we had a list of speakers on Bill C-2 and that we were bringing them forward in a timely fashion. We were cut off yesterday by a motion to adjourn the debate by Senator Gigantès. We were up on our feet immediately today when the item was called. We brought forward two speakers, one after the other. We were then informed for the first time that there would be Royal Assent at four o'clock. I find this totally unacceptable. It is contrary to what the rule states.

If we are to have any degree of fairness in this chamber, the Speaker cannot accept this kind of an abuse of the rules. If the Deputy Leader of the Government wants to have a discussion on time allocation, which is the essence of rule 39(1), then I am available at any time to have a meeting to discuss that matter.

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, there have been some discussions with the Deputy Leader of the Opposition. There has been no agreement. In that, he is quite right. He was not informed of Royal Assent today. However, I think if he were to check his phone messages, he would find that there was an

honest attempt made to inform him of Royal Assent this afternoon at four o'clock. I even phoned his leader in an attempt to contact him. Unfortunately, I failed to make contact with him. However, I did attempt to convey that information to him.

The discussions on Bill C-2, as I think we know, have been ongoing since the time this session was reconvened after the last recess. I am not talking about discussions in this chamber; I am talking about discussions with the deputy leader.

I think senators know that there were several attempts to work out a pre-study arrangement with regard to the bill. After the bill was introduced, the committee made several attempts to seek permission to travel. None of those measures, unfortunately, has reached fruition because we have never been able to reach an agreement.

In my view, attempts have been made to ensure that the process was followed fully, pursuant to rule 39.

Hon. David Tkachuk: Might I ask a question of the honourable senator? This is only the third day that this bill has been before the Senate. The government moved second reading on Monday. Today is Wednesday.

The Hon. the Speaker: Honourable senators, I believe this whole discussion is out of order. This is a notice of motion. It is not a motion at this point. It is a notice of motion made by someone, and the motion will be moved at a later date.

Senator Tkachuk: This is a motion to limit debate.

The Hon. the Speaker: I have no knowledge of the background leading up to this notice of motion. However, I think the notice of motion is perfectly in order under rule 39(1). I do not think it is appropriate to have a debate on a notice of motion.

Hon. John Lynch-Staunton (Leader of the Opposition): We are raising a point of order, Your Honour, on the appropriateness of bringing forward this notice of motion at this time. As Senator Kinsella pointed out, the rule is very specific. It states:

> ...the Leader of the Government in the Senate or the Deputy Leader of the Government in the Senate...may state that the representatives of the parties have failed to agree to allocate a specified number of days or hours for consideration of any stage...

Those discussions have not been held. All that we have been told is, as we are always told at this time of year, "We would like certain legislation passed before the Christmas recess." There have never been any discussions either between the leader or the deputy leader and myself and the deputy leader on this side regarding a specific time allocated for debate and a time for a vote. Therefore, this notice of motion is out of order because those discussions have not been held. The rule could not be clearer.

There is also an absolute contradiction in the deputy leader's approach. She allowed the adjournment of the debate, which means it would carry on tomorrow, and hopefully another day. At the same time as allowing the adjournment of the debate, she now brings forward a notice of motion which, in effect, states that she wants to cut it short.

It is an interpretation. One cannot use motivation to support a procedural point. One can certainly quote a rule which is very specific. The conditions in this rule have not been met. Therefore, the notice of motion is out of order.

The Hon. the Speaker: Honourable senators, I regret that we cannot continue the discussion at this time. As was mentioned earlier, we must adjourn now for Royal Assent at four o'clock.

Honourable senators, the Senate will now adjourn during pleasure to await the arrival of the Honourable the Deputy of His Excellency the Governor General.

The Senate adjourned during pleasure.

[*Translation*]

ROYAL ASSENT

The Right Honourable Antonio Lamer, Chief Justice 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 Acting Speaker, the Right Honourable the Deputy Governor General was pleased to give the Royal Assent to the following bills:

> An Act to establish the Saguenay-St. Lawrence Marine Park and to make a consequential amendment to another act (Bill C-7, *Chapter 37, 1997*)
>
> An Act 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 fiscalevasion 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 (Bill C-10, *Chapter 38, 1997*)

The House of Commons withdrew.

The Right Honourable the Deputy Governor General was pleased to retire.

The sitting of the Senate was resumed.

[*English*]

•(1610)

CANADA PENSION PLAN INVESTMENT BOARD BILL

SECOND READING—DEBATE CONTINUED

On the Order:

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

The Hon. the Speaker: Honourable senators, we suspended our sitting when we were dealing with a point of order on the notice of motion by Honourable Senator Carstairs.

Senator Noël A. Kinsella (Acting Deputy Leader of Opposition): Honourable senators, because of the interruption, I will recapitulate so that the point of order on which I am seeking a ruling is fresh in our minds.

I refer to rule 39(1) on page 41 of the *Rules of the Senate* which provided:

> At any time while the Senate is sitting, the Leader of the Government in the Senate or the Deputy Leader of the Government in the Senate...may state that the representatives of the parties have failed to agree to allocate a specified number of days or hours for consideration of any stage of consideration...on any item...

The key element of this rule is that the parties have failed to agree to allocate a specified number of days or hours.

If that has been done and there has been such a failure, the consequence is that a notice of motion may then be given as to time allocation.

If the hypothesis is not true, it did not occur, then the consequence of the hypothesis does not follow. That is to say, no notice of motion can be given on that basis.

Honourable senators, I am asserting that at no time did the Deputy Leader of the Government ask me how many days or hours were required to dispose of Bill C-2 at this stage, nor did the Deputy Leader of the Government propose to me a given number of days or hours.

I do not know how we can deal with this if no proposal was made as to the number of days or hours that the government side was considering, or if no one asked me explicitly how many hours or how many days we would require to complete the debate at second reading.

The rule is specific. It is not general. That discussion, with that level of specificity, did not occur. Therefore, what flows after the words, "If so" in the rule does not apply.

I ask that there be a specific ruling on the interpretation we are to give to rule 39(1) because we cannot have the government deciding and declaring, at a certain moment in time, that there is no agreement on the time line of the bill and, therefore, notice is to be given of time allocation, which is then debated and a determination made.

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, it is clear from the discussions here that there is a failure to agree on when the debate on this bill will be concluded. The notice of motion was given today.

I would assure everyone in this chamber that, if agreement can be reached, there will be no need to move the motion. This is simply a notice of motion.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, we are making a parody of the rules. The deputy leader is putting the cart before the horse. A notice of motion is being given because, they say, there has been no agreement, but then they want to start working on an agreement. This rule is only invoked when an agreement is impossible. Once it is imposed, you cannot seek agreement.

Senator Murray: She is condemned out of her own mouth.

Senator Lynch-Staunton: The Deputy Leader of the Government has contradicted herself at least twice. This notice of motion is completely out of order because no agreement has been reached and it has not even been sought, according to the terms here of the "hours" and "days." It has not even been sought, as is confirmed by the deputy leader when she says that we should now try to reach an agreement.

Let us remember — and this may be straying from the point of order — that our interest in getting this bill through was expressed by Senator Kinsella on October 7 when he suggested that the committee prestudy it. He again made that suggestion on October 23. We cannot be accused of delaying the passage of this bill. The delay is because of the mismanagement on the other side. That is an opinion which does not relate directly to the point of order.

The point of order is that the specific conditions to support a notice of motion have simply not been met. Even the deputy leader, perhaps unwittingly, has admitted that herself.

Senator Carstairs: No such admission has been made. There is no agreement in this chamber nor is there any agreement between the leaders as to when we will complete second reading of this particular bill.

The deputy leader of the opposition was asked earlier this afternoon if there was any willingness to complete the debate tomorrow. No confirmation of that was forthcoming from the Deputy Leader of the Opposition at that time. At that point, I told him that I would be introducing a notice of motion.

•(1620)

Hon. Donald H. Oliver: Honourable senators, it seems to me that the Speaker is left with one option, that is that the application on behalf of the Deputy Leader of the Government is a nullity. The plain language in the section is clear and has at no time been contradicted. Senator Kinsella says that at no time was the plain language of this rule expressed to him by the deputy leader on the other side and at no time was there an attempt to agree to allocate a specific number of days or hours for consideration.

On the application of plain language to the rule, it is clear that if the Deputy Leader of the Government cannot state that she did ask for an allocation of days and hours, her application must fail.

Therefore, I respectfully submit, Your Honour, that what you must do is declare the deputy leader's application a nullity and request that the deputy leaders further pursue the matter with due diligence. After that time, if they cannot agree, then and only then do you have the jurisdiction to recognize her motion.

Hon. Richard J. Stanbury: Honourable senators, I have a great deal of respect for my friend Senator Oliver and also for my friend Senator Kinsella. However, they have a way of adding a great amount of filling to the wording of a rule. If we look only at what the rule says and what the Deputy Leader of the Government has indicated to us, then there is no question.

Rule 39(1) says:

> At any time while the Senate is sitting, the Leader of the Government in the Senate or the Deputy Leader of the Government in the Senate, from his or her place in the Senate, may state...

That is not speculation, that is a fact.

> ...that the representatives of the parties have failed to agree to allocate...

That again is a matter of fact. They do not have to have a discussion.

Senator Oliver: Yes, they do.

Senator Lynch-Staunton: Are you a lawyer?

Senator Stanbury: On the basis of the plain wording, it could be without discussion. That they have failed to agree. That is all it says.

Senator Lynch-Staunton: Agree to what?

Senator Stanbury: They have failed to agree to allocate time for consideration any adjourned motion or debate. That is why it was adjourned. If so, at that time, notice of motion to allocate may be given. It is very clear on the plain language of the rule. It is a matter of fact. The Deputy Leader of the Government may state that the parties have failed to agree.

In order to meet this rule, the Deputy Leader of the Government does not need to have a discussion about it. However, she has had a discussion about it. I saw her going across to discuss the matter with Senator Kinsella.

Senator Oliver: They were talking about the time of day.

Senator Stanbury: I believe that other attempts were made to have a discussion, but they were not responded to. That is a matter between the two of them.

The fact is that the Deputy Leader of the Government is stating that the parties have failed to come to agreement, and that is all that matters, Your Honour.

Senator Oliver: Senator Stanbury neglected to deal with the operative words of the rule. The operative words of the rule are "... to allocate a specified number of days or hours...."

In the absence of that being able to be asserted by the honourable member opposite, the rule and the application fail. That one phrase in the entire rule is the operative phrase.

Senator Stanbury: I would disagree completely.

Senator Oliver: It is "allocation."

Senator Stanbury: Those are not the operative words at all. The question is, have the parties failed to agree to allocate time. They have failed to agree. It has been stated that they failed to agree, and that is what is required.

Senator Oliver: The essence of the application is to allocate time. There is a request that this chamber allocate and fix the time.

Senator Stanbury: They failed to agree to allocate.

Senator Oliver: The Deputy Leader of the Government must come with "clean hands" and be able to say to this chamber that we have failed to agree to allocate a specific number of days and hours. That allocation comment cannot and has not been made by the honourable member opposite and, therefore, the application fails. The essence of the application is allocation.

Hon. David Tkachuk: Your Honour, I implore you to remember that rules are made not to protect the Deputy Leader of the Government, nor to protect the government, but to protect the opposition. It is your responsibility to protect us.

If Senator Stanbury is correct, then the notice that the Deputy Leader of the Government gave could have been given on the first day of debate. That means that we could have a system where there is no debate as long as there is a majority and as long as these authoritarian and rather totalitarian rules are imposed on the senators on this side of the chamber.

I request that you favour the position of Senator Oliver and not Senator Stanbury. To draw it to its fullest conclusion, it would mean that this notice of motion could have been introduced two days ago, and that would make the Senate and Parliament a farce. I am asking you to rule wisely, Your Honour.

Hon. Anne C. Cools: Honourable senators, there is some confusion and ambiguity as to what the rules mean. I would be happy to volunteer to chair a committee to review the rules.

SPEAKER'S RULING

The Hon. the Speaker: If no other honourable senator wishes to speak, I make the general observation that, indeed, much of the wording of the rules could be improved so that they are clearer. It would make life easier for the Speaker.

In general, debates on rules are interesting and useful as they are a means of arriving at improvements to our rules. I agree with the general principle that the Speaker must be conscious of the rights of minorities. I am quite aware of that.

However, honourable senators are asking me now to rule on something upon which I should not be asked to rule and upon which it is an impossibility for me to rule; that is, what has been said or done in private conversations at which I was not present. One senator is stating one thing, another is stating another about conversations to which I was not and should not have been privy. It is impossible for me to rule on that matter. I must accept that the notice of motion is in order.

Senator Oliver: The ruling should be appealed.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, we are appealing the ruling.

The Hon. the Speaker: Honourable senators, the question before the Senate is: Will the Speaker's ruling be sustained?

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen.

The Hon. the Speaker: There is an agreement between the whips, as the rules provide, that we will have the vote at 5:30 p.m.

Please call in the senators.

Speaker's ruling sustained on the following division:

YEAS

The Honourable Senators

Adams
Bacon
Barth
Bonnell
Bryden
Butts
Carstairs
Chalifoux
Cools
Corbin
De Bané
Fairbairn
Forest
Gigantès
Grafstein
Graham
Haidasz
Hays
Hébert
Hervieux-Payette
Joyal
Kirby
Lewis
Losier-Cool
Maheu
Mercier
Milne
Moore
Pearson
Perrault
Petten
Pitfield
Robichaud (*L'Acadie-Acadia*)
Robichaud (*Saint-Louis-de-Kent*)
Rompkey
Sparrow
Stanbury
Stewart
Stollery
Taylor
Watt—41

NAYS

The Honourable Senators

Andreychuk	Kelly
Atkins	Kinsella
Beaudoin	Lavoie-Roux
Bolduc	LeBreton
Buchanan	Lynch-Staunton
Cochrane	MacDonald
Cogger	Meighen
Cohen	Murray
Comeau	Nolin
DeWare	Oliver
Di Nino	Phillips
Doyle	Roberge
Eyton	Robertson
Forrestall	Rossiter
Ghitter	Spivak
Grimard	Stratton
Gustafson	Tkachuk—35
Kelleher	

ABSTENTIONS

The Honourable Senators

Nil

Hon. David Tkachuk: Honourable senators, I do know whether this is a question of privilege or a point of order, but I ask for a clarification of the vote. With respect to the ruling honourable senators just voted on, the foundation of the ruling was that His Honour the Speaker was not privy to the conversations that took place.

The Hon. the Speaker: I am sorry, honourable senator, but your question is out of order.

I ruled quite clearly that the notice of motion was in order. My ruling was challenged, and the question before the Senate was whether my ruling was to be sustained.

On motion of Senator Spivak, debate adjourned.

CRIMINAL CODE INTERPRETATION ACT

BILL TO AMEND—SECOND READING—MOTIONS IN AMENDMENT—VOTES DEFERRED

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.",
>
> And on the sub-amendment of the Honourable Senator Phillips, seconded by the Honourable Senator Wood, that the motion in amendment be amended by deleting the word "and" at the end of paragraph (*b*) and by adding the following after paragraph (*c*):
>
> > "(*d*) the Court, by its Order of November 19, 1997 that Bill C-16 must be enacted by December 19, 1997, is impeding proceedings in Parliament and is subordinating the Senate of Canada; and
> >
> > (*e*) the Court is usurping the royal prerogative of the Sovereign who, with the advice and consent of Parliament, keeps and upholds the Queen's Peace and the public peace and security of all."—(*Speaker's Ruling*).

The Hon. the Speaker: Honourable senators, yesterday, Wednesday, December 9, during debate on the recent amendment moved to the second reading motion of Bill C-16, an Act to amend the Criminal Code and the Interpretation Act (powers to arrest and enter dwellings), Senator Phillips proposed a sub-amendment. At the time, I indicated I would take this under advisement because I wanted to consider any procedural implications.

As I previously indicated to the Senate, recent amendments have not been common in the Senate. Indeed, in the research, I find the last one to be on July 7, 1981, which was not sustained, and it referred to a previous ruling on May 8, 1946.

[*Translation*]

I have reviewed what few precedents we have with respect to reasoned amendments and I have considered procedures relating to sub-amendments. I could find no occasion in Senate practice where a reasoned amendment was amended. At the same time, however, I could find no clear authority stating that it could not be done. In fact, I am aware of recent precedents in the House of Commons where sub-amendments have been moved to reasoned amendments.

[*English*]

As I understand it, the purpose of this sub-amendment is to add to the reasons already provided in the original motion in amendment why Bill C-16 should not be read the second time. According to Beauchesne's 6th Edition, citation 580 at pages 176-177, a sub-amendment:

> ...should not enlarge upon the scope of the amendment but it should deal with matters that are not covered by the amendment.

Further, at citation 584 dealing with the form and content of a sub-amendment, (2) explains that:

> A sub-amendment must be relevant to the amendment it purports to amend and not to the main motion.

Honourable senators, based on these two relevant citations, I rule that the sub-amendment is in order. Debate can now resume.

Hon. Brenda M. Robertson: Honourable senators, I move adjournment of the debate.

The Hon. the Speaker: Honourable senators, it is moved by the Honourable Senator Robertson, seconded by the Honourable Senator Kelleher, that further debate be adjourned to the next sitting of the Senate.

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

Hon. Wilfred P. Moore: Honourable senators, an item on the Order Paper is not adjourned automatically merely because a senator moves the adjournment motion. There is generally a courtesy in the Senate that when a senator speaks but is not ready to make his or her remarks, he or she is allowed time —

The Hon. the Speaker: I am sorry, honourable senator, but the motion to adjourn the debate is not debatable. It is before the Senate.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of adjourning the debate, please say "yea"?

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion the "nays" have it. Therefore debate shall continue.

And two honourable senators having risen.

The Hon. the Speaker: Call in the senators.

Motion negatived on the following division.

YEAS

THE HONOURABLE SENATORS

Andreychuk	Kelly
Atkins	Kinsella
Beaudoin	Lavoie-Roux
Bolduc	LeBreton
Buchanan	Lynch-Staunton
Cochrane	MacDonald
Cogger	Meighen
Cohen	Murray
Comeau	Nolin
DeWare	Oliver
Di Nino	Phillips
Doyle	Pitfield
Eyton	Roberge
Forrestall	Robertson
Ghitter	Rossiter
Grimard	Spivak
Gustafson	Stratton
Johnson	Tkachuk—37
Kelleher	

NAYS

THE HONOURABLE SENATORS

Adams	Joyal
Bacon	Kirby
Barth	Lewis
Bonnell	Losier-Cool
Bryden	Maheu
Butts	Mercier
Callbeck	Milne
Carstairs	Moore
Chalifoux	Pearson
Corbin	Petten
De Bané	Robichaud
Fairbairn	(*L'Acadie-Acadia*)
Forest	Robichaud
Gigantès	(*Saint-Louis-de-Kent*)
Grafstein	Rompkey
Graham	Stanbury
Haidasz	Stewart
Hays	Stollery
Hébert	Taylor
Hervieux-Payette	Watt—38

ABSTENTIONS

THE HONOURABLE SENATORS

Cools
Sparrow—2

Hon. Wilfred P. Moore: Honourable senators, as I started to say earlier, an item is not adjourned automatically just because a senator moves a motion to adjourn.

I am new to this place but I understand that, generally, there is a courtesy extended to a senator when he or she wishes to speak but is not yet ready to do so in that he or she is allowed to take the adjournment. The courtesy is not a rule. Courtesy does have its limits and I believe we have reached that limit today.

It is time for any senator who wishes to speak on this bill to make those remarks now so that the Senate can get on with its work.

Bill C-16 was introduced and given first reading in the Senate on November 18. Second reading debate for Bill C-16 began on November 20. Since then, every senator has had ample opportunity to participate in the debate.

Since the motion for second reading was moved three weeks ago, there have been nine sittings of the Senate. There have been several points of order and several adjournments.

POINT OF ORDER

Hon. Anne C. Cools: Honourable senators, I rise on a point of order. What question are we speaking on?

The Hon. the Speaker: The question before the Senate is the sub-amendment moved by the Honourable Senator Phillips.

Senator Cools: Senator Moore had moved the original motion, so I was confirming that he is not closing the debate, because I wish to speak.

Hon. Wilfred P. Moore: I am entitled to speak on the sub-amendment and on the amendment.

Let us review the progress we have made. On November 20, there was a point of order as to the acceptability of the motion for second reading. The Speaker ruled that no breach of order existed. Immediately after the Speaker's ruling, the debate was adjourned by Senator DeWare for Senator Nolin.

On November 25, the order was called and was stood. That means no one spoke to it. Out of courtesy, the Senate waited for the opposition spokesperson to put his or her views on the record.

On November 26, the order was called and it again was stood. The Senate granted the opposition the courtesy of allowing their spokesperson prepare his or her speech.

On November 27, debate finally resumed, one week after it began. Up to that point, there had been only one speech — mine. Senator Nolin spoke, and then we had a motion in amendment from Senator Cools.

The Speaker intervened and decided to rule as to whether a reasoned amendment is acceptable in the Senate. Senator Kinsella raised a point of order on the right of the speaker to decide the acceptability of the amendment proposed by Senator Cools without receiving a point of order requesting him to do so. Out of necessity, debate was adjourned to await the Speaker's ruling.

On December 2, the Speaker gave his ruling and found that the amendment was in order. No one spoke to the order. Senator Lynch-Staunton moved the adjournment. Again, out of courtesy, the Senate accommodated the opposition and the debate was adjourned.

On December 3, the order was stood.

On December 4, Senator Kinsella adjourned the debate.

On Monday of this week, December 8, Senator Phillips adjourned the debate. Yesterday, after Senator Phillips spoke, we had yet another point of order and debate was necessarily adjourned.

There have been nine sittings of the Senate since the motion for second reading, and we have had eight adjournments. Honourable senators, I would suggest, have had plenty of time to prepare their remarks.

•(1750)

It is time to get on with it and make a decision so that the Standing Senate Committee on Legal and Constitutional Affairs can do its work and examine this bill.

Every effort has been made to accommodate the Official Opposition in the Senate and to accommodate the leadership on the other side. Now, I think, it is appropriate that we draw the line in extending the courtesy of allowing adjournments on this particular bill.

The amendment and the sub-amendment do not change the basic debate, honourable senators. The motion for second reading is self-explanatory. The amendment and sub-amendment effectively negate the original motion. A senator does not need to adjourn the debate to prepare a new speech based on each sub-amendment that might be moved. If any senator wishes to speak, let him or her do so today.

Any senator who wishes to intervene on second reading may do so today. If no one speaks today, the Senate should make a decision today so the committee can do its work.

Honourable senators, the work and research done on this matter by Senator Cools has been exemplary. There may be merit in it. Probably, those points should have been raised in the other place. That, again, confirms and reaffirms why we have a Senate, a place of sober second thought. However, whether or not the feet of Parliament have been stepped on by the Supreme Court is not the key issue here.

I should like to talk about the consequences of not passing Bill C-16. On May 22, 1997, the Supreme Court of Canada handed down its judgment in the case of *R v. Feeney.* The month that followed the release of the *Feeney* decision showed how chaotic the situation may become.

Honourable senators should know that in Montreal the police had to stay outside a dwelling-house for hours until they could get an arrest warrant coupled with an authorization to enter. The whole neighbourhood was, to say the least, disrupted. That does not account for the fact that those who were to be arrested had a lot of time, if they wished to do so, to prepare for the arrival of the police. Evidence can disappear and violence can erupt in these situations.

Bill C-16 provides the flexibility that the law enforcement agencies need in order to do their difficult job — flexibility that is not available if you interpret the *Feeney* case the way it has been interpreted in Montreal, for instance.

The Hon. the Speaker: Honourable senators, I again appeal to honourable senators who must have conversations to please do so outside the chamber. We cannot hear Senator Moore.

Senator Lynch-Staunton: We should adjourn the debate, then!

Senator Moore: The solutions to the *Feeney* situation vary from region to region. In some areas, it is arguable that the preferred solution could be unconstitutional. At the very least, the use of these solutions will be challenged without having a strong argument that Parliament has spoken.

As we know, the courts give Parliament's pronouncements a measure of deference when considering whether or not a rule is constitutional. The very fact that solutions vary is very problematic. How can police powers be different from region to region without bringing the administration of justice into disrepute?

Should Parliament not speak on issues of such importance instead of leaving that to the imagination of practitioners who may come up with solutions the constitutionality of which may themselves prove to be problematic? It is far from clear what situations may develop that will allow for arrest in a dwelling without the need for an authorization. This is an essential feature of Bill C-16 in that Parliament spells out circumstances in which police, because of urgency, must be able to intervene without authorization.

Without Bill C-16, law enforcement officers do not have anything to rely on and may simply refuse to intervene without that judicial authorization, with dire consequences for those involved, in particular in matters that involve domestic violence.

If Bill C-16 is not passed before December 19, we return to the situation as it was before the *Feeney* case, which was chaotic. What prompted the provincial attorneys general of Canada to intervene in the matter by asking for a stay becomes our new reality. Law enforcement agencies have to try to cope as best they can, which implies inconsistency in the law and lack of clarity and chances that preferred solutions would be ruled unconstitutional, with possible acquittals to follow in undeserving cases, a lack of flexibility for law enforcement, disruption of neighbourhoods, and disrepute of the administration of justice.

The Supreme Court has not ordered Parliament to do something. A perusal of the decision of Mr. Justice Sopinka confirms that. That point was succinctly made by Senator Nolin when he spoke on second reading. The Supreme Court has opened the door for Parliament to speak on this issue. It is an opportunity that Parliament may choose to seize. This is an urgent matter because, in the meantime, the court allows, for all intents and purposes, breaches of fundamental rights by agreeing to suspend the effects of its decision.

In other words, honourable senators, the constitutional right to privacy is broken every time the police arrest someone without a judicial authorization to enter into a dwelling-house. It is urgent that this situation be remedied, either by reading in something, whatever it will be in different parts of the country, or by passing Bill C-16.

Lastly, in terms of the consequences of not proceeding with this bill and getting it into committee and having it passed, how will the Senate of Canada look? It seems to me that we are here as a final back-stop to ensure that the country is properly governed, that the citizens have all of their rights that accrue to them, and that we make every effort to see that peace, order and good government are sustained through out the land. This is one of the reasons why we are here.

Honourable senators, I ask all senators to vote on this tonight, to defeat the amendments, and to pass Bill C-16 as introduced.

Hon. Pierre Claude Nolin: Honourable senators, I have a question.

Senator Moore: I move second reading, Your Honour.

Senator Cools: You cannot do that, Your Honour, because it is now six o'clock.

The Hon. the Speaker: No, not quite six o'clock.

An Hon. Senator: It is two minutes before the hour!

Senator Cools: Let the honourable senator ask a question.

Senator Nolin: Honourable senators, I have a question for the Honourable Senator Moore. In your last sentence, you asked us to pass the bill tonight.

Hon. Sharon Carstairs (Deputy Leader of the Government): No, to send it to the committee.

Senator Cools: Honourable senators, I wish to speak but the clock reads six o'clock.

Senator Adams: You have spoken already!

Senator Cools: The clock reads six o'clock.

The Hon. the Speaker: You can begin your speech, honourable senator. There is about a half a minute left. At six o'clock I will rise and ask if there is a wish for me to see the clock or not see the clock. At the moment, you have one minute. Therefore, you may begin.

Senator Cools: Very well. I will use the 15 seconds available to me.

Honourable senators, I would like to say that I welcome Senator Moore's intervention. I have begun to think —

The Hon. the Speaker: Honourable senators, I am sorry, but I must interrupt the honourable senator. The clock now reads six o'clock. Is there a desire for me not to see the clock? Am I to see the clock?

Some Hon. Senators: Yes!

The Hon. the Speaker: Then I declare it six o'clock, and I will leave the Chair to return at eight o'clock.

The sitting of the Senate was suspended.

•(2000)

The sitting of the Senate was resumed.

Hon. Anne C. Cools: Honourable senators, I rise to speak in support of Senator Phillips' sub-amendment to my reasoned amendment, for the reasons outlined in my speeches in the Senate on November 20 and 27, 1997. Senator Phillips also asserts that the principles underlying Bill C-16 are inherently flawed, repugnant to Parliament and to parliamentary responsible government under Canada's constitutional monarchy. I affirm and uphold our parliamentary cabinet system. Reasoned amendments are a parliamentary device that allow members to oppose the principles of a bill. Erskine May, in his *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 21st Edition, wrote that reasoned amendments:

> ...may express opinions as to any circumstances connected with the introduction or prosecution of the bill, or otherwise opposed to its progress.

My reasoned amendment goes directly to the nature of the constituent power for Canada, the essence of political sovereignty, and the constituent power for enacting legislation.

Honourable senators, I move now to the most famous case of judicial review, the 1981 reference to the Supreme Court of Canada from the Government of Canada by then Liberal Prime Minister Pierre Elliott Trudeau on the patriation of the Constitution, known as the *Reference Re Amendment of the Constitution of Canada*.

In March 1991, Mr. Pierre Elliott Trudeau spoke about that Supreme Court judgment on the occasion of the opening of the Bora Laskin Law Library at the University of Toronto. Bora Laskin was the Chief Justice of the Supreme Court of Canada at the time of the reference. Mr. Trudeau was reflective, insightful, and forthright. He examined the role of the Supreme Court in that 1981 reference. Mr. Trudeau, the architect of the Charter of Rights, 1982, peered closely at that judgment, the judges, and the court itself, and gave us his mature and uncompromised thoughts.

Mr. Trudeau distinguished between those questions for judicial consideration and those for parliamentary consideration. He distinguished the judicial role of the courts from the political role of Parliament, and condemned any political role of courts. Mr. Trudeau, in that speech reprinted in his book *Against the Current*, said:

> ...the Supreme Court allowed itself — in Professor Hogg's words — "to be manipulated into a purely political role" going beyond the lawmaking functions that modern jurisprudence agrees the Court must necessarily exercise.

About the Supreme Court judges' majority decision, he told us that the majority judges acted politically, saying:

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

Mr. Trudeau praised the minority judges for resisting that political temptation, saying:

> The minority also avoids the wrenching manipulation of the legal tests to which the majority had to resort...

Mr. Trudeau asserted that Canadians had a right to expect judgments from the courts that were based on law and not on politics. Mr. Trudeau and these Houses of Parliament, in enacting the Constitution Act, 1982, did not intend what the justices are doing today.

Honourable senators, I move now to the inherent repugnance of the principles and context of Bill C-16. The Supreme Court of Canada, on June 22, 1997, granted its stay of judgment for six months to November 22. Parliament was given six months to pass a law. On October 30, 1997, just three weeks before this

court-ordered deadline expired, Bill C-16 was introduced in the House of Commons. Members there asked for time to properly study the bill. On November 4, before the Commons Justice Committee, Minister of Justice and Attorney General Anne McLellan responded to their concerns by saying:

> I would ask that the committee deal with this matter expeditiously. Of course it is possible, but not desirable for us to return to the Supreme Court and ask for an extension of the stay.... Clearly I would seek the indulgence of the committee and ask that you see if you're able to deal with this in an expeditious fashion rather than have to return to the Supreme Court.

The Minister declined to ask the Supreme Court for another extension for House of Commons study. She pressed members, under party discipline — which she called "indulgence" — to pass Bill C-16 hastily and without proper study. Members obeyed and passed Bill C-16 on November 7, 1997. Immediately thereupon, on the same day, Minister McLellan's lawyers brought an application to the Supreme Court seeking an extension of the stay past November 22. Attorney General McLellan's notice of motion in this application, at page 2, states:

> AND FURTHER TAKE NOTICE that the said motion shall be made on the following grounds:
>
> 1. Bill C-16, which would address the legislative lacuna identified by this Court in its judgment in R. v. Feeney, has received third reading in the House of Commons;
>
> 2. Although Bill C-16 may receive Royal Assent before the stay ordered by this Court expires on November 22, 1997, it is not certain at this time that this will come to pass;
>
> and such further and other grounds as this Court may permit.
>
> DATED at Ottawa, this 7th day of November, 1997.
> Robert Frater
> Counsel for the Intervener,
> The Attorney General of Canada

Honourable senators, this notice of motion included the November 10, 1997 sworn affidavit of Yvan Roy, the Department of Justice official who will probably be the first witness before the Standing Senate Committee on Legal and Constitutional Affairs. Mr. Roy's affidavit reveals the department's *modus operandi*, and reveals scant respect for Parliament, particularly the Senate. Mr. Roy's affidavit reads at paragraph 11:

> Near the end of August, 1997, I had the opportunity to raise the issue of a possible legislative response to this Honourable Court's judgment in Feeney with the new Minister of Justice, the Honourable Anne McLellan. With the new Minister's accord, I immediately began to take the steps necessary for the introduction of a government bill providing for a mechanism by which a peace officer could obtain judicial authorization to enter a dwelling-house to effect an arrest therein.

Mr. Roy swore in an affidavit that he obtained the minister's accord — not the minister's instructions, not the minister's wishes, but her accord. At paragraph 24, Mr. Roy spoke of Minister Don Boudria:

> On October 27, 1997, I met with the Government leader of the House, the Honourable Mr. Don Boudria, to seek his support and to set a timetable which would assist in ensuring that the Bill would receive due consideration by the House of Commons in view of the tight deadline under which we were operating.

I note that Mr. Roy, not Minister McLellan, obtained Minister Boudria's and the House of Commons' support. Mr. Roy's affidavit continued at paragraph 25:

> On October 30, 1997, on behalf of the Minister of Justice, the Honourable Anne McLellan, the Honourable Alfonso Gagliano introduced in the House of Commons a Bill entitled An Act to amend the Criminal Code and the Interpretation Act (powers to arrest and enter dwellings). This Bill, identified as Bill C-16, amends the Criminal Code to provide for warrants and authorizations to enter dwelling-houses for the purposes of arrest. A copy of the Bill C-16 is attached as Exhibit "A" herein.

This is a scandal. I repeat: Mr. Roy submitted Bill C-16, Exhibit "A" as evidence to the Supreme Court in the case of *Michael Feeney v. Her Majesty the Queen*. This is a grievous and solemn matter. Bill C-16 was submitted to the Supreme Court for judgment. It was obviously adjudged favourably, as demonstrated by the court order on November 19, 1997.

•(2010)

Mr. Roy continued at paragraph 29, describing parliamentary proceedings, saying:

> I attended the hearings held by the Standing Committee for Justice and Human Rights. At those hearings I witnessed Committee members from every party voice their concerns that without an extension of time to fully review Bill C-16, Parliamentarians would be unable to fulfil their roles as fully informed representatives when asked by the Government of Canada to enact this particular legislation.

He is putting this sworn testimony to the courts after it had left the House of Commons. This is scandalous. Mr. Roy swore his affidavit the same day Bill C-16 passed the House of Commons. At paragraph 32, Mr. Roy spoke to the Senate's proceedings by saying:

> The Senate will now have to give consideration to Bill C-16. As Parliament does not sit during the week of November 10, Bill C-16 cannot be considered in the Senate before November 18, 1997. There cannot be any assurance however, that the Bill will be passed and given Royal Assent before November 22, 1997, despite the best efforts made to have this Bill go through the parliamentary process as efficiently as possible.

Honourable senators, Mr. Roy's disregard for Parliament is great. Paragraph after paragraph, in his sworn affidavit, Mr. Roy placed parliamentary proceedings, including Bill C-16, before the Supreme Court for judgment. Obviously, the only parliamentary consideration then still outstanding that day was that of the Senate. The extension he sought was exclusively for this body. The Senate is not a supplicant to the Supreme Court of Canada. Mr. Roy is not authorized and has not been asked by the Senate to make representations to the Supreme Court on behalf of the Senate or to place Senate proceedings before the court. The contempt is profound. This motion and this affidavit are an embarrassment, a shame, and a public spectacle. The greatest shame is to Canadians who have been disenfranchised of rights to a representative Parliament. The principles and propriety in Mr. Roy's actions elude me.

Many bureaucracies and bureaucrats no longer feel compelled to uphold the "noble lie" that they are directed by ministers of the Crown. Mighty and lucrative are the bureaucracies and the bureaucrats who drive them. Their interests are numerous and varied. I am a Liberal. I am opposed to interests and to the entrenchment and consolidation of interests. As a Liberal, I oppose the current practice of masquerading interests by the deployment of rhetorical affirmations, particularly rhetorical affirmations of the Charter-of-Rights variety. The Supreme Court, the Minister of Justice, and the department's officials have violated the Senate's inviolable right to exclusive control of its internal proceedings and its inherent right to enact legislation, and they have done so knowingly. In case we have any doubt, let us understand that, in testimony before the House of Commons Justice Committee on November 4, 1997, Minister McLellan said:

> This is a legislative response not dictated by federal government policy, but dictated by the Supreme Court of Canada.

The Minister of Justice has said that the Supreme Court dictated this legislative response, which is why I oppose this bill by these reasoned amendments. That is also why I feel free to oppose it, because it does not come out of any Liberal Party policy or any government policy. This is a dictate, a command, from the Supreme Court of Canada.

I speak now to the Royal Prerogative. Prosecutorial discretion is an exercise of the Royal Prerogative by Attorneys General, both federal and provincial. Their limits are the limits of responsible government. In the *Feeney* case, the Supreme Court created a new, previously unknown warrant and a new term, "judicial authorization." It is unclear whether such warrant or judicial authorization could be issued by justices of the peace, or by magistrates, now called "provincial court judges," or may only be issued by section 96 justices, that is, superior court justices. The warrants' issuance system originates in the sovereign's royal prerogative and duty to uphold the public peace, not in any judicial power. "Judicial authorization" is a meaningless term. Senator Phillips' amendment speaks directly to the authority behind the issuance of warrants and the royal prerogative in respect of maintaining the public peace.

In conclusion, I emphasize that the Supreme Court struck down no law, or declared no law of Parliament inoperational or of no effect. There is a great deal of obfuscation of this fact. For reasons known only to the judges, the court has ordered Parliament to pass a law, and that law is Bill C-16. The court declared that the Criminal Code's silence is unsatisfactory to its judicial subjective preferences. This is judicial legislative-making, judicial activism.

The Hon. the Speaker: I regret to inform the honourable senator that the 15-minute time period has elapsed. Are you seeking leaving to continue?

Senator Cools: Yes, I am.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

Senator Cools: Thank you, honourable senators.

Judicial legislative-making is anti-democratic and subversive of Parliament. The oldest principle and rule of law of judicial review is that where and when the law is silent, so must the judges be silent; and where the law stops, so too must the judges stop. Judges must stand aside and let current democratic parliamentary majorities rule. The case law is compelling that, where and when a statue is silent, the judges cannot speak.

No wish of the Supreme Court justices is superior to the Criminal Code of Canada or of Parliament's will. The Supreme Court took Senate proceedings into its cognizance and issued an order giving the Senate until December 19, 1997 to pass Bill C-16. In Canada, this is unprecedented, and it is an unmasked bid for power and domination. It is naked political judicial activism. Judicial activities, judicial appointments, and judicial political activism are becoming the pressing social and political issues of the day. Unrelated to principles or to the rule of law, and unrelated to democracy, the Supreme Court's current notion of charter judicial review has turned itself into an organ of naked power which is inconsistent with both the letter and the spirit of the 1982 Charter of Rights as given to us by Mr. Pierre Elliott Trudeau.

I am a member of a party where Mr. Trudeau's name is no longer mentioned, but I remain devoted to the good work that he did. The Charter of Rights has not changed the Supreme Court of Canada into a political body or an unaccountable legislature or even a super legislature. I reject the Supreme Court of Canada's legislative activities. I reject its imperious and, yes, unlawful command to the Senate, and therefore, I support Senator Phillips' amendment. I urge all honourable senators to examine this matter carefully, to consider the principles that gave birth to Bill C-16, to condemn them, and to support this amendment.

I thank honourable senators for their attention.

Hon. Brenda M. Robertson: I should like to ask Senator Cools a question. Would she mind tabling the affidavit from which she quoted? I would also request also that this document be appended to the *Debates of the Senate* of today.

The Hon. the Speaker: Is leave granted to table the document?

Hon. Senators: Agreed.

The Hon. the Speaker: Is it agreed by honourable senators that this document be appended to today's *Debates of the Senate*?

Hon. Senators: Agreed.

*(*Editor's Note: *For text of document, see appendix to* Debates of the Senate *of December 11, 1997, Issue No. 30)*

Senator Cools: Honourable senators, I would be delighted to table the document from which I was quoting. The document is a notice of motion from court case, file No. 24752, the case of *Michael Feeney v. Her Majesty the Queen*. The top page is the judgment itself. There is no need to put it on the record, but it says very clearly that the stay of the judgment was granted until Bill C-16 was passed. It is a document of some 35 to 40 paragraphs. I would be quite happy to table the document.

•(2020)

I encourage all senators to read it and to study it carefully. If they have any doubts whatsoever, it is here.

The Hon. the Speaker: I am sorry, Honourable Senator Cools, you have had your speech. It is simply a question of tabling the document, if you please.

Senator Cools: I was in the process of tabling it. Usually tabling takes a word or two.

The Hon. the Speaker: No, I am sorry, Honourable Senator Cools, it does not.

Senator Cools: At least if I am tabling a document, I should say what it is. How can it be tabled if it is not identified by name?

Hon. Herbert O. Sparrow: Honourable senators, I rise to support the amendment and the sub-amendment of Senator Cools and Senator Phillips.

The bill before us, Bill C-16, is the result of a Supreme Court order which ordered Parliament to pass a law and to do so in a court-ordered time line. I find this objectionable. First I will speak to the *Feeney* case and the Supreme Court decision in that case.

In the small British Columbia community of Likely, Michael Feeney was convicted of the second-degree murder of Frank Boyle. Feeney, when arrested, was wearing clothing still heavily splashed in blood. In my review, it seemed that the evidence showing that Feeney was guilty of this offence was overwhelmingly clear and uncontroverted.

Further, the court of first instance and British Columbia's Court of Appeal upheld the conviction of Michael Feeney. The Supreme Court of Canada ruled contrarily and overturned the conviction, ordered a new trial for Michael Feeney, and made the rulings of which Bill C-16 is the result.

The Supreme Court of Canada ordered that the previous arrest warrant was insufficient for arrests in a private dwelling-house and that a new and additional warrant would be necessary, despite the fact that the Criminal Code of Canada previously had not enacted any such requirement.

Honourable senators, I support the reasoned amendments and the sub-amendment to this bill. First, I shall speak to the savage death suffered by Mr. Frank Boyle and the consequences to the community of such a violent and cruel act.

Frank Boyle was an 85-year-old man who was known in the community for repairing toys for children. At any age, all seniors are vulnerable to predators because human beings of advanced years are not physically strong. The increased evidence of crime and violence against Canada's seniors is mounting and is a matter that should concern senators. An 85-year-old man is totally defenceless against an aggressive attack, and is incapable of resisting assault and repelling an assailant.

We must be mindful of the condition of, and the frailty of, our very elderly. As senators we must be vigilant in defending them, and ensuring their safety and security by maintaining the public peace.

Honourable senators, I have grave concerns that the Supreme Court of Canada has cast the Senate into the role of supplicant, as demonstrated in the Supreme Court order which has resulted in Bill C-16.

I believe in the sovereignty of Parliament, and that laws and the Constitution of Canada forbid the Supreme Court of Canada from issuing a direct order to Parliament.

Honourable senators, public concern for the role of the Supreme Court of Canada is mounting. In recent weeks, there have been many articles in the media regarding the judiciary. I would like to mention just a few.

On November 28, 1997, Peter Stockland of the *Calgary Herald* wrote in an article entitled, "Supreme Court judges need to be held accountable" that "Stunningly, elected politicians in the Commons just followed orders from their new Supreme masters."

Anthony Keller, in a December 1, 1997, *Globe and Mail* article, wanted a public word with the would-be judges. He felt that Canadians might want to consider just who is reading our constitutional rule book.

Mike Blanchfield of *The Ottawa Citizen* wrote on November 25, 1997, asking who really governs Canada and citing Professor Ted Morton, who feels that criminal defence, under the new rules of the court, will be limited only by lawyers' imaginations and their clients' wallets. With Legal Aid, that wallet may be bottomless.

Honourable senators, I support the reasoned amendment and sub-amendment and urge all senators to do so.

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, I wish to lend my support to the sub-amendment that was proposed by Senator Phillips. The record now in Hansard will show that this chamber has been advised of the decision of the Supreme Court of Canada in the *Feeney* matter and, in particular, that the stay of judgment ordered by the court on June 27 has been extended to December 19 — that is next Friday — or, in the alternative, to the day that this bill, Bill C-16, receives Royal Assent, if this occurs prior to December 19.

In this order, the Supreme Court mentioned a specific bill which has not been passed by Parliament. This is extraordinary. On a day like today, when we celebrate human rights, we have to give sober consideration to this matter.

This is not a partisan political issue. This is an issue where a branch of our system of governance — the court — has rendered a judgment which speaks directly to the freedom of Parliament to exercise judgment on matters legislative. There is a clash, honourable senators. When this matter first came up, I did not think it was a serious matter, but upon listening to the debates, I believe every honourable senator should be looking at this carefully.

I am not sure as to the resolution of this matter, but I am sure that there is a clash; there is a conflict, and we would be derelict in our duties if we did not attempt to assess that clash or that conflict. The Supreme Court of Canada has mentioned a specific bill — not an act, not a law, but a bill, but a matter that is before Parliament. In this instance, it is before this chamber. They mention a bill that has not been passed by Parliament.

This goes further, honourable senators. This order of the court presumes that the bill ought to receive Royal Assent under our system of governance.

We have another system of governance, that is fine, but this is the system we have in the here and now. We have instructions from another branch of our system of governance that the Royal Assent, indeed, must be given. If we are serious at all in our reflections on this matter, this must raise very serious questions. It is unprecedented.

Based upon the debate so far, it appears — though this may not be true — that the effect of the court's action is to command Parliament to pass a certain bill by a certain date. It is requiring that the Crown, the Sovereign or, under our system, the representative of the Crown, give assent prior to a certain date. The Crown must do something prior to a certain date, otherwise there will be a lifting of a stay of judgment. In other words, that is a threat, a blackmail in other jargon of similar kind.

I hope Senator Maheu joins in this debate because it is a serious matter.

The problem is that there is a time line involved. We on this side are not interested in delaying this matter, because some harm may befall the administration of justice in our country if this matter is not addressed. We are in a bit of a box. We are in a bit of a conundrum. At least we will have a few days in which to consider this.

•(2030)

Senator Cools has done us a service by raising this matter. This is a subject to which I have never attended previously. A number of other honourable senators are beginning to give serious consideration to this matter.

We have had sufficient debate about the nature of the reasoned amendment and we have the ruling that the amendment is properly before us. Also, we have the sub-amendment to which I am speaking.

I support the sub-amendment that Senator Phillips has moved. If anything, if what Senator Cools has argued is true, perhaps she has understated the case. Accordingly, Senator Phillips' proposed a sub-amendment to the amendment proposed by Senator Cools expressing further grounds as to why this bill ought not to be read a second time.

I am certain that I need not remind honourable senators of the debate currently raging not just in these limited quarters, but across Canada. The central question to that debate is who governs Canada; is it Parliament or the judges? This debate is not occurring just in political science graduate classes. Many Canadians are discussing this issue because they are beginning to understand the impact.

One of the issues to which Senator Phillips' sub-amendment speaks is that Parliament is sovereign when acting within its constitutional role to legislate. We often catch ourselves being involved in matters which are properly under the judicial branch of our system.

We recognize that our role is to legislate. It is being suggested that the courts see, understand and play their role to adjudicate and not legislate. We are governed by a system of procedure, rules, customs and timing. We must preserve those functions and meet those duties and responsibilities which are ours.

However, the sub-amendment moved by Senator Phillips also speaks to the issue that one of the principal prerogatives of the sovereign Parliament is the maintenance of the Queen's peace. The Queen's peace is the ideal and normal state of society, the state of public order and obedience to the law.

In summation, because of the hour of the day, honourable senators, I support Senator Phillips' sub-amendment, which speaks to this issue. I have also elaborated somewhat on the grounds upon which Senator Cools' amendment has been raised.

The Hon. the Speaker: Honourable senators, before we proceed any further on the motion before us, I have received a copy of the documents to which the Honourable Senator Cools referred and which were to be tabled.

The documents are 10 pages in length and some of them contain much material. The documents are provided in only one language. We will be unable to provide translation in time to produce it in the *Debates of the Senate* for tomorrow. It is simply an impossibility.

We will proceed with them as early as we can, but presumably in another official document of the Senate. I trust this will be acceptable.

Senator Cools: Your Honour, I am sure the Supreme Court of Canada has the French translation and it can be easily obtained.

The Hon. the Speaker: The problem is that at this hour of the evening, we may not be able to obtain that information. However, we will try to obtain the translation as quickly as we can.

Having said that, honourable senators, we have three questions before us: the motion by the Honourable Senator Moore seconded by the Honourable Senator Ferretti Barth for the second reading of Bill C-16; the motion in amendment by the Honourable Senator Cools seconded by the Honourable Senator Sparrow; and the motion in sub-amendment by the Honourable Senator Phillips, seconded by the Honourable Senator Wood.

The question immediately before us is on the sub-amendment.

Is it your pleasure, honourable senators, to adopt the sub-amendment?

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker: Will those in favour of the sub-amendment please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those opposed to the sub-amendment please say "nay."

Some Hon. Senators: Nay.

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

Senator Cools: On division.

And two honourable senators having risen.

The Hon. the Speaker: Is there an agreement as to the length of the ringing of the bell?

Senator Kinsella: Honourable senators, pursuant to rule 67(1), I request that the standing vote be deferred until tomorrow.

The Hon. the Speaker: Honourable senators, might I ask Honourable Senator Kinsella if he is acting on behalf of Honourable Senator DeWare, who is the Whip of the Official Opposition?

Hon. John Lynch-Staunton (Leader of the Opposition): Senator DeWare is the Acting Whip and in her absence Senator Kinsella takes on her responsibilities.

The Hon. the Speaker: Thank you, Senator Lynch-Staunton.

VOTE DEFERRED

The Hon. the Speaker: It is moved by the Honourable Senator Kinsella, as the Acting Whip of the Opposition, seconded by the Honourable Senator Murray that the vote be deferred until tomorrow.

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

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, pursuant to rule 67(2), the vote stands deferred until tomorrow at 5:30 p.m.

[*Translation*]

QUEBEC

LINGUISTIC SCHOOL BOARDS—MOTION TO AMEND SECTION 93 OF CONSTITUTION—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Graham, P.C., seconded by the Honourable Senator Mercier:

Whereas the Government of Quebec has indicated that it intends to establish French and English linguistic school boards in Quebec;

and whereas the National Assembly of Quebec has passed a resolution authorizing an amendment to the Constitution of Canada;

and whereas the National Assembly of Quebec has reaffirmed the established rights of the English-speaking community of Quebec, specifically the right, in accordance with the law of Quebec, of members of that community to have their children receive their instruction in English language educational facilities that are under the management and control of that community and are financed through public funds;

and whereas section 23 of the *Canadian Charter of Rights and Freedoms* guarantees to citizens throughout Canada rights to minority language instruction and minority language educational facilities under the management and control of linguistic minorities and provided out of public funds;

and whereas section 43 of the *Constitution Act, 1982* provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies;

now therefore the Senate resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by His Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

SCHEDULE

AMENDMENT TO THE CONSTITUTION OF CANADA

CONSTITUTION ACT, 1867

1. The Constitution Act, 1867, is amended by adding, immediately after section 93, the following:

"93A. Paragraphs (1) to (4) of section 93 do not apply to Quebec."

CITATION

2. This Amendment may be cited as the "Constitution Amendment, year of proclamation (Quebec)"

Hon. Serge Joyal: Honourable senators, it is an honour for me to speak today in the continuation of the debate. I will be particularly brief, given the importance of the question and in particular the fact that the debate on this question coincides with my arrival in the Senate. There are at least two aspects I would like to inform the honourable senators about. I would first speak to a question raised by Senator Lynch-Staunton on the procedure followed by this house in the debate on the motion.

The Honourable Senator Lynch-Staunton mentioned that he did not see the usefulness of hurrying the debate and voting on this motion since, according to him, the system in Quebec already works well enough and there was no need to exhaust the debate immediately and prevent an analysis of all aspects of it.

The second point I wish to speak on follows from remarks by the Honourable Senator Roch Bolduc, who raised a question requiring further thought.

Before I address the point raised by Senator Lynch-Staunton, I want to say, given the fine words he used with respect to me on my arrival in this house, that not only am I totally indebted to a member of his family for having contributed to the foundation of an institution I was associated with and have remained associated with for 30 years, but he himself contributed directly to another of my undertakings when I was in the other House. He was directly involved in an initiative that led to the foundation of the decorative arts museum in Montreal when he was on the council of the City of Montreal, and I am profoundly grateful to him.

That having been said, I wish to reply to the objection raised by Senator Lynch-Staunton, who asked the house in the hours preceding adjournment of this debate, why we should rush this motion through.

I would like to draw the honourable senator's attention to the act to amend the public education act, and the legislation on school elections and other legislative provisions passed by Quebec's National Assembly on June 19, 1997, less than six months ago. Section 68 of this act reads as follows:

> If, before January 1 of the year following publication of the decree of territorial division made pursuant to section 111 of the public education act, there is published the proclamation of the Governor General of Canada under the Great Seal of Canada decreeing that paragraphs (1) to (4) of section 93 of the Constitution Act, 1867, do not apply to Quebec, the present act and the public education act, as amended herein are, effective the date of publication of this proclamation, amended in accordance with the schedule.

What does this mean in plain English? It means that, if this chamber does not conclude its debate before the January 1, 1998 adjournment, the Government of Quebec will again find itself in violation of section 68.

What will it then have to do to fulfil the requirements of this legislation that it itself introduced in the National Assembly? It will be obliged to create two school board structures in Quebec simultaneously, one a denominational structure, the structure that exists under section 93 of the Constitution Act, 1867, and another administrative structure, as provided in the transitional measures, a linguistic structure, for a maximum of one year.

In practice, if we do not pass this motion before January 1, 1998, the Government of Quebec will find itself obliged to add a linguistic structure to the denominational structure. Pursuant to section 68, this can only be done for a period not exceeding one year. During this year, it will have to assume the costs of two administrative school structures simultaneously, and it will likely have to amend section 68 to regularize the situation. To put it plainly, the result will be administrative chaos for a certain amount of time, because it will have to maintain two parallel administrative structures, which will lead to additional costs and a period of uncertainty in the system.

This is the legal reason that would normally make it desirable to conclude this debate before January 1, 1998, as I was pointing out earlier, to fulfil the requirements of an act of the National Assembly of Quebec, which makes specific provision in section 68, passed in June 1997, for these transitional measures.

I would think this sufficient reason to justify voting in a timely manner before January 1, 1998.

Second, I would like to provide an answer to a substantive question raised by the Honourable Senator Bolduc, who is echoing the views of the Honourable Senator Pitfield and other honourable senators on both sides of this Chamber.

This is a more fundamental issue. It arises from the following question: Are we justified in removing the guarantees given to two minorities mentioned in section 93, namely the Roman Catholic and Protestant communities? Do we have the ability to remove the constitutional guarantees of each of these minorities? It seems to me that this is a much more fundamental issue.

From what the Honourable Senator Bolduc said, in practice, these two communities, which have benefited from such guarantees since the Constitution Act, 1867, was passed, are now being treated differently by religious authorities speaking on their behalf.

Having read the report of the special joint committee of the Senate and the House of Commons as well as some of the briefs submitted and the evidence presented to the committee, there are two letters that cannot be overlooked. The first one is from Monsignor Pierre Morissette, Bishop of Baie-Comeau and president of the assembly of Quebec bishops. The assembly is made up of 33 Quebec bishops, representing 25 dioceses throughout the province. This means that the person who signed this letter, Monsignor Pierre Morissette, does not speak for himself but for the 33 Quebec bishops responsible for the 25 dioceses in the province.

What does this letter say? I shall read it to you:

> The assembly of Quebec bishops first came out in support of linguistic school boards as early as 1982.
>
> The Catholic church is a hierarchical organization. It is run by the assembly of bishops for administrative matters and by a synod, when these same bishops have to deal with doctrine-related matters. The issue which concerns us now does not relate to doctrine but to the bishops' administrative responsibilities, and the assembly of bishops has the ability to speak on the church's behalf.

In their letter dated September 30, 1997, the bishops tell us that they accept the establishment of linguistic school boards. This, in my opinion, is an essential step in the process undertaken by the National Assembly.

However, the bishops raise another point in their letter. They say that their support for the establishment of linguistic school boards is conditional to:

> ...maintaining the denominational guarantees provided by Bill 107.

What does Bill 107 say? It calls for the use of the notwithstanding clause in the Canadian Charter of Rights and Freedoms, a clause whose application is limited to a period of five years. In other words, the Assemblée des évêques du Québec supports the establishment of linguistic school boards, as long as the guarantee provided under Bill 107, which refers to the use of the Charter's notwithstanding clause, is maintained.

So, what are the bishops asking for? They are asking that the constitutional guarantee, as we know it in section 93, be replaced by a guarantee that is limited in time. The bishops are well aware that the notwithstanding clause can only be in effect for five years. What additional protection are they looking for, so that the notwithstanding clause can be invoked again at the end of the five-year period? Again, let us look at Bishop Morissette's letter:

> Our conviction has always been that the choice of means was a responsibility incumbent upon the political authorities.

Therefore, according to the wording of their letter, the bishops will wait for the political debate that could take place in Quebec at the end of the five-year period. In short, they are not asking for a constitutional guarantee in the fundamental law of the land. They will wait for the political debate that may take place when the notwithstanding clause expires. Therefore, the comments made by Senator Bolduc went beyond the request made by the bishops.

•(2050)

So much for those who spoke on behalf of the Catholic faith.

What about the representatives of the Anglican faith? Their views are expressed in the letter of November 3, 1997 from the Right Reverend Andrew Hutchison, Bishop of Montreal, speaking on behalf of the Montreal diocese of the Anglican Church of Canada.

The Anglican faith is governed by a hierarchical structure based in London, much like the headquarters of the Catholic faith in Rome. In the 19th century, there was a saying to the effect that when Rome had spoken, discussion was over.

The bishops of Quebec have informed us of their position with respect to the administrative issues. In the case of the Montreal diocese of the Anglican church, the Right Reverend Andrew Hutchison has told us the position of the Anglican Church. What is that position? I quote:

> The Montreal diocese of the Anglican Church of Canada feels that it is in the best interest of Quebec society to switch to a non-denominational school board structure.

So, authorities of the Anglican Church in Quebec are clearly in favour of non-denominational administrative structures, as are their colleagues of the Catholic faith. Their positions differ, however, regarding the guarantees they want to see in the legislation concerning religious observance or instruction as it concerns the Anglican faith. What do they say? I quote:

> The rule of fairness must prevail.

We believe all the more strongly that the government must demonstrate and confirm the principle of equality before the law when dealing with the great religious traditions that have for so long been part of Quebec society.

What does all this mean? It means very simply that the representatives of the Anglican Church are not looking for a specific constitutional guarantee for the Anglican faith. They are content with the general guarantees applying to all faiths.

Consequently, the objection raised by Senator Bolduc and echoed by other senators seems to me to find its response in these two letters from the spokespersons for the Anglican and Catholic faiths. In other words, these two are not asking us for constitutional guarantees for the teaching of their respective faiths. The Catholic representative refers to the notwithstanding clause and the political debate which may arise as a result. The Anglican calls for equal treatment for all religious faiths in Quebec, in keeping with a tradition of freedom which, they say, has long been a part of Quebec society.

Consequently, honourable senators, having read these two letters representing clear positions by the authorities of these two religious denominations, we are ready to move to the adoption of this motion.

Honourable John Lynch-Staunton (Leader of the Opposition): I have a question for Senator Joyal. He is using the two letters quoted in this house as his basis for supporting the resolution. His interpretation of the letters is perhaps not the same as mine, but there will be a chance to debate it, perhaps tomorrow, when the Minister of Intergovernmental Affairs will be here before the committee of the whole.

Senator Joyal attaches importance to the words of the religious hierarchy, regardless of which religion it is, but will he attach the same importance to the words of the Newfoundland bishops and the leaders of the other religious denominations in Newfoundland, who are speaking out against amending section 17 of the Constitution?

The Hon. the Speaker: I must notify the honourable senators that the 15 minutes allotted to Senator Joyal are up. Is leave granted to continue, honourable senators?

Hon. Senators: Agreed.

Senator Joyal: Honourable senators, there is no doubt that in a debate such as this, where we are dealing with religious freedom — one of the fundamental freedoms — we must bear in mind the positions taken by the authorities representing each of the denominations affected by the bill.

When this Chamber receives the request from the Legislative Assembly of Newfoundland, I will certainly refer to the position taken by the hierarchical authorities of those denominations. We will be in a position to debate the matter fully, just as I have debated the position of each of these religious denominations fully. We will see what the situation is in Newfoundland, as opposed to what it is in Quebec, and we will be able to take a position accordingly.

Senator Lynch-Staunton: The great concern of many senators on both sides is that, if they pass the resolution, the only guarantee that the protection of section 93 of the Constitution gave the two religions in Quebec will be extended for two years at most.

I will try to summarize the issue as succinctly as possible, because it has been debated at length. However discriminatory these guarantees seem to us today, what guarantees can the two religions hope for from the Quebec National Assembly? By amending section 93 of the Constitution, are we not playing a role in the extinction of rights acquired over 130 years?

Senator Joyal: Honourable senators, the resolution as it stands, as it came to us from the National Assembly and the other chamber, has to do with the complete extinction of fundamental constitutional guarantees. There is no doubt in my mind about that. If we rely, however, on the positions taken by the religious authorities of each of the two faiths concerned, we must realize that the 33 bishops, who represent the assembly of the Catholic faithful, are in favour of extinguishing these fundamental constitutional guarantees. I am in complete agreement with Senator Lynch-Staunton; no one can promise that the guarantee replacing section 93 of the Constitution and the guarantee to apply the notwithstanding clause, which is limited in time to five years, will be renewed on the same terms after the five-year period. There is no doubt about this, in my opinion.

However, representatives of the Catholic faith are turning to the politicians to renew the guarantee for another five-year period. They are prepared to wager on political freedom in Quebec and to have their voices heard in such debates at the Quebec National Assembly in order to come to terms with the removal of the fundamental guarantee.

I totally agree with you. This is an essential part of the decision we must make. Similarly, representatives of the Protestant faith are expressing agreement with the application of the principle of general equity to all religious faiths. They are not looking for a guarantee that is broader than what they are seeking for the Jewish faith or other religious denominations in Quebec, be they Muslim or other.

There is a difference in the positions taken by the representatives of these two religious denominations. However, as legislators, we must ask ourselves whether we must go beyond the requests of the representatives of each faith. Should we guarantee rights beyond what they themselves are requesting in writing? That is the basic question we must ask ourselves.

Must we impose on the Catholic and Protestant faiths constitutional guarantees that are not being sought by their religious leaders?

•(2100)

The debate comes down to this fundamental issue.

In keeping with the arguments submitted to this house, I wish to vote in favour of the resolution, since this seems to be what the representatives of both churches want.

Senator Lynch-Staunton: Senator Joyal, what do you suggest we tell people if the Quebec National Assembly does not extend the notwithstanding clause in 1999? What will be the reaction of the Parliament of Canada, which would thus indicate its lack of interest in protecting certain minorities belonging to two religious faiths? If you read the letters carefully, you will see that both of them, each in its own way, support the amendment provided that the agreement on religious education, as it exists today, is extended. They do not actually have this right now. They rely on the Government of Quebec, whose plans for the future are clear, as we know. Do we want to be party to that?

Those who are now in power in Quebec voted against the notwithstanding clause adopted under Mr. Ryan. If in two years, in 1999, they refuse to extend the notwithstanding clause, what will be our position after having been party to that possible scenario? The leaders of these two Christian faiths are asking for more than a piece of paper; they are asking for a guarantee.

In his letter, Bishop Morissette asks:

> — that the denominational guarantees afforded by Bill 107 be maintained.

They do not have these guarantees. In my opinion, the Parliament of Canada should have this assurance, which we do not have. By approving the resolution, we are discouraging the renewal of the notwithstanding clause.

Senator Joyal: Honourable senators, Senator Lynch-Staunton is drawing conclusions from something that may or may not happen in 1999. I do not deny that it could happen; it is in the realm of possibility. However, I refer you again to Monsignor Morissette's letter, in which he states:

> The assembly of Quebec bishops first came out in support of linguistic school boards as early as 1982.

It is clear that we are abolishing a global guarantee and replacing it with a limited and risky guarantee. However, it is the guarantee that the keepers of the Catholic faith are prepared to support, on behalf of all the bishops in Quebec. They are the keepers of the Catholic faith and they are in favour of substituting the guarantee provided in section 93 of the Constitution with a limited and risky guarantee. This guarantee currently exists, but there is no assurance that, at the end of the five-year period in two years, the notwithstanding clause will be maintained. The bishops leave it up to the political authorities. They leave it up to a public debate that may take place in Quebec, among citizens exercising their freedom of expression, exercising their right to be heard by their elected representatives and to express their views. The bishops are prepared to accept this situation. They tell us this is their fundamental position.

Under the circumstances, I can only accept their decision. As we say, "Rome has spoken." The leaders of the Catholic church in Quebec clearly support linguistic school boards, as long as the guarantee provided in Bill 107 is there; no more, no less. It is a risk — and Senator Lynch-Staunton will certainly agree — that our bishops in Quebec surely assessed, since they know that the Parti Québécois, which is currently in office in Quebec, voted against Bill 107 when they were in opposition. In their great wisdom, the bishops are prepared to accept this system. We may hold different views regarding the absolute guarantees that, ideally, we could look for. However, once the leaders of the faith have spoken, I as legislator should accept their decision.

Senator Lynch-Staunton: May I make one last comment?

The Hon. the Speaker: Is it a question, Senator Lynch-Staunton?

Senator Lynch-Staunton: We are allowed to make comments and to ask questions?

The Hon. the Speaker: Absolutely. Go ahead.

Senator Lynch-Staunton: Honourable senators, "Rome has spoken." Rome has spoken in Quebec and in Newfoundland too. Let us not forget it. We will get back to this.

[*English*]

Honourable senators, the Catholic bishops have said that their approval for changing the status of school boards has always been accompanied by one condition, that the denominational guarantees established in Bill 107 be maintained. That guarantee is not there.

The Anglican bishop, in less direct terms, came to the same conclusion. They said that they favour the creation of linguistic school boards and the establishment of a non-denominational educational system which respects the choice of parents to require that their children receive religious and moral education in conformity with their beliefs. Those guarantees are not there.

Whether we agree with the discriminatory elements of section 93 as we assess them today or not, the question we will be answering tomorrow is: Are we willing, openly, to take away certain rights that another authority will not guarantee to maintain? If we do that, then what we are setting off is a trigger of events in Newfoundland and Ontario. Already the debate in Ontario has started on the status of separate schools, triggered by the debates in Newfoundland and Quebec.

Honourable senators, these are all guarantees in the Constitution, and we are chipping away at them. I think we should reflect very seriously on the impact of our decision tomorrow on this resolution.

Hon. Jean B. Forest: Honourable senators, I wish to address a question to the Honourable Senator Joyal. I respect the weight of evidence my honourable friend places on the bishops' letters. However, I would make a different interpretation.

I have lengthy experience in Catholic education working with the Catholic bishops and helping to develop the Catholic catechism. One of the tenets of that catechism is that parents are the primary educators of the children.

What weight would my honourable friend place on the evidence before the committee by many parents who expressed their concern about that tenet? We put much weight on the bishops' statements, but has the honourable senator given thought to the many letters and petitions to the joint committee respecting the concerns of Catholic parents, as well as some of the Protestant parents?

[*Translation*]

Senator Joyal: Honourable senators, the argument raised by Senator Forest is extremely important and flows from what Senator Lynch-Staunton was saying. The parents are the first people concerned when it comes to the religious education of their children. That is why, in the letter from the bishops, both Catholic and Protestant, and also from the Most Reverend Hutchison, the issue of freedom to worship is fundamental. In this context, there is no doubt that the freedom to choose one's religion and access to religious education are freedoms to which we are deeply committed and which are recognized by the Charter of Rights and Freedoms.

Both letters mentioned the importance of the right of the parents to choose.

•(2110)

What the Catholic and Protestant bishops are recognizing is that school boards will be structured along linguistic rather than denominational lines. However, having acknowledged this reality, they insist on the principle of the parents' freedom of choice so that their children can be taught one of the faiths within the new linguistic structure. This is clearly stated in the letter of the Catholic bishops and also in the letter from the Most Reverend Hutchison. Therefore, if I thought that this freedom may be limited in any way by the decision we will be taking, I would certainly have a different position.

[*English*]

Hon. Sharon Carstairs (Deputy Leader of the Government): Does Senator Taylor have a question? If not, I was about to move the adjournment.

Hon. Nicholas William Taylor: Might I also ask Honourable Senator Joyal a question?

The Hon. the Speaker: I must ask again leave of the Senate. Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Taylor: Senator Joyal, you answered the last question by saying that it would have religious freedom within a linguistic milieu. Why can it not be the reverse, so you could have linguistic freedom within a religious milieu? Why do you think this system will be better than the other? I ask that bearing in mind what Senator Lynch-Staunton said, that, like a skier out on a slope of new snow, you may be starting an avalanche in other provinces in trying to change constitutional rights of minorities by a unanimous or near unanimous vote of a legislature. Coming from Alberta, Honourable Senator Joyal, I have no faith in unanimous votes of legislatures.

[*Translation*]

Senator Joyal: I would like to remind the honourable senator that it is simply because of the historical situation in Quebec that denominational structures were limited to the Catholic and Protestant faiths. Quebec society has become more diverse since the Constitution Act of 1867 was adopted. There are now many other religious groups. It is to allow such a diversity that the representatives of the Catholic and Protestant faiths first supported linguistic rather than denominational school boards.

It was not to prevent people from worshipping in the religion of their choice. It was rather to allow each of the new faiths that have appeared since 1867 to be included in jointly managed structures that operate in French or in English. That is the only reason.

[*English*]

On motion of Senator Carstairs, for Senator Wood, debate adjourned.

NEWFOUNDLAND

CHANGES TO SCHOOL SYSTEM—AMENDMENT TO TERM 17 OF CONSTITUTION—CONSIDERATION OF REPORT OF SPECIAL COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the report of the Special Joint Committee on the Amendment to Term 17 of the Terms of Union of Newfoundland, deposited with the Clerk of the Senate on December 5, 1997.

Hon. Joyce Fairbairn: Honourable senators, I move the adoption of this report.

The Hon. the Speaker: Honourable senators, before Honourable Senator Fairbairn speaks, I believe that previously we had agreed that on matters of constitutional amendments, the first speaker would be entitled to 45 minutes and the next speaker would also be allowed 45 minutes. I assume that that agreement still carries.

Senator Fairbairn: Honourable senators, it is my pleasure to speak tonight on the report of the Special Joint Committee on the Amendment to Term 17 of the Terms of Union of Newfoundland.

I had the honour to serve as the co-chair of that committee and I would like to express my personal thanks to colleagues from the Senate and from the House of Commons who participated, and also great appreciation to the co-chair from the other place, Gerry Byrne, the member for Humber—Sainte-Barbe—Baie Verte.

We had an excellent and intensive set of meetings over a three-week period during which we heard from 49 witnesses. I want to thank each of them for the time, the thoughtfulness, the care and, indeed, the patience they invested in their presentations.

We started with the Minister for Intergovernmental Affairs, the Honourable Stéphane Dion. We then heard from the Newfoundland and Labrador Minister of Education, the Honourable Roger Grimes, and the leader of the New Democratic Party in the province, Mr. Jack Harris.

We heard from constitutional experts, from civil- and human-rights advocates, from leading representatives of various religious denominations involved in education in Newfoundland and Labrador, and from government officials who were part of the process which led to this amendment. Finally, of great importance, we heard from teachers and from parents and students, the people who will be the most directly affected by the proposed changes.

Honourable senators, these were people with significant things to say. They were heard out and listened to by the committee members. Time was taken for full and lively discussion, and that was important to all of us. Was there unanimity among the witnesses? Not surprisingly, there was not. When I last spoke in this chamber on the previous amendment to Term 17, I described it as a highly charged issue on which emotions ran very deep, and that has not changed.

This committee, which included representatives of five political parties from the other place and two political parties from this chamber, was not unanimous in its report. Our Conservative Senate colleagues dissented from the report, as did the Reform Party members. However, I believe we were able to explore the various issues raised in an in-depth and serious way, and we did so with courtesy and respect for differing points of view. In the end, the majority on the committee recommended that both Houses of Parliament adopt the resolution, and it is from that perspective that I speak to you tonight, honourable senators.

The proposed amendment is to Term 17 of the Terms of Union of Newfoundland, which governs constitutional powers over education for the Province of Newfoundland and Labrador, and education, as we know, is an area of exclusive provincial jurisdiction.

Term 17 applies, instead of section 93 of our Constitution, which has no application or relevance in Newfoundland and Labrador. It is also important to stress, as was clear from the evidence we heard, that a bilateral amendment to Term 17 will have no effect on the constitutional provisions for denominational education in other provinces such as Alberta, Manitoba, Quebec and Ontario. Indeed, we were advised it will have no legal effects whatsoever on education or denominational minorities in any province other than Newfoundland and Labrador. These opinions came from legal and constitutional experts, including Mr. Dion and lawyers such as Anne Bayefsky of York University, David Schneiderman of the University of Alberta, Ian Binnie of the law firm McCarthy Tétrault, and Mary Dawson, Associate Deputy Minister in the federal Department of Justice.

The proposed amendment would replace the existing denominational school system with a single, publicly funded system where all children would attend the same schools regardless of their religious affiliation.

•(2120)

As many of you are aware, the Newfoundland school system has been unique in Canada. Indeed, many of us from other provinces have had difficulty understanding the system because it is so fundamentally different from those we have known as students, teachers or parents.

The proposed system would also be unique in Canada. It is a system designed specifically by and for Newfoundlanders, through their own history of and their approach to the role of religion in publicly funded education.

Newfoundland has made an application for this amendment under section 43 of the Constitution Act, 1982. That section provides a bilateral amending formula for amendments in relation to any provision of the Constitution that applies to one or more but not all of the provinces.

Since Canada adopted a domestic amending formula in 1982, there have been no fewer than six requests from various provinces for a bilateral section 43 amendment. Unlike the general constitutional amending formula, which requires a degree of consensus that has proven very difficult to attain, section 43 presents an example of the flexibility of the Canadian approach to difficult issues and a way to allow a province to approach such issues in a manner specifically designed for that province with its own particular history and traditions.

Section 43 has been used to entrench the equality of the two linguistic communities in New Brunswick and to amend Prince Edward Island's Terms of Union to allow for the so-called "fixed link" bridge joining that province to the mainland. Tonight, we are discussing in this chamber a section 43 amendment to section 93 of the Constitution Act, 1867, dealing with jurisdiction over education and denominational rights as it applies to Quebec.

Finally, section 43 has been used twice before, once in 1987 and then again in 1996, to amend Term 17 of the Terms of Union of Newfoundland.

One might ask: Why must Parliament be involved and why are we here again, given that Term 17 was amended as recently as a year and one-half ago? First, we are here because the federal Parliament and not just the Government of Canada has an obligation to review and approve any amendment to a constitutional provision. Second, quite simply, the last Term 17 amendment was an attempt at a compromise solution and it just did not work.

As I mentioned earlier, the publicly funded school system of Newfoundland and Labrador stands alone in Canada. Every other province has a so-called public school system, which is non-denominational. There may also be a publicly funded denominational school system, such as the separate school system here in Ontario.

By contrast, in Newfoundland there is no publicly funded non-denominational public school. All students who go to a publicly funded school must, of necessity, go to a school run by one or more of seven designated churches: Roman Catholic, Pentecostal, Anglican, Presbyterian, United, Salvation Army, and Seventh Day Adventist. Four of these groups, the Anglican, United, Presbyterian and Salvation Army churches, came together in 1969 to establish the integrated education council and began to operate the current integrated schools.

There is no other option in Newfoundland. Jewish students, Muslim students, Buddhist students, to name a few of the religious groups outside the seven designated Christian ones, must attend a denominational school run by one or more of these designated churches.

This system predates 1949, when Newfoundland joined Confederation, and was frozen by Term 17 of the Terms of Union. In 1987, a section 43 amendment was passed to add the Pentecostal Assemblies to the list of protected churches with certain denominational educational rights, in particular, those rights that existed as of the date of union in 1949.

There has been a great deal of debate over the years surrounding the system of education in Newfoundland which is one of Canada's sparsely populated provinces, with approximately one-half million people scattered across its large and very beautiful territory. It is also one of the poorest provinces in Canada. We were told that school enrolment has declined severely. Over the last 12 to 15years, the province went from a student enrolment of 162,000 to just over 100,000 students.

We were also told that the system of education has led to much duplication of resources. We heard, for instance, of two small communities that have each supported two high schools, each serving approximately 200 students. Combining them would allow for additional course offerings and better resources overall. However, the high schools serve different denominations and the resources have had to be split to allow both to exist in each small community.

Over the years, many attempts have been made to change the education system without a constitutional amendment. They have been ably described at various times in this chamber and I will not repeat them now. Ultimately, however, it was concluded that meaningful reform could not proceed without the amendment of Term 17, which was before us in 1996.

That amendment was a compromise solution. All schools would have remained denominational schools and there were provisions for unidenominational schools. The seven protected churches continued to have constitutionally entrenched rights which were enumerated in the complicated provisions.

Clearly, that compromise did not work. A court challenge was introduced on May 15, 1997, by representatives of the Roman Catholic Church and the Pentecostal Assemblies, arguing that the legislation passed to implement the education reforms was contrary to the newly amended Term 17. On July 8, Mr. Justice Leo Barry of the Supreme Court of Newfoundland trial division decided that a trial judge would likely find that the legislation was contrary to the amended Term 17. Accordingly, he granted a preliminary injunction. It halted the closure of Roman Catholic and Pentecostal schools without their consent, and it stopped the school designation process.

I should like to emphasize that there was no suggestion in Mr. Justice Barry's decision that the amended Term 17 was itself in any way improper or invalid. The problem was that certain parts of the implementing legislation passed by the Newfoundland House of Assembly were found likely to be contrary to that amended Term 17. I mention this because there has been some confusion over this point, with some people suggesting that the amended Term 17 was somehow found unconstitutional, and this was not the case.

Mr. Justice Barry acknowledged in his decision that the likely result of the injunction issued during the summer while schools were closed would be "significant disruption" and "possibly even chaos," to use his own words, among teachers, parents and students trying to make plans for the upcoming school year.

Hon. Lowell Murray: Honourable senators, would the honourable senator would accept a question?

Senator Fairbairn: Yes.

Senator Murray: In view of the decision Mr. Justice Barry has brought down, would Senator Fairbairn agree, that the House of Commons would have been infinitely wiser to accept the Senate amendment calling for the addition of the term where numbers warrant with regard to the unidenominational schools in Newfoundland?

•(2130)

Senator Fairbairn: Both Senator Murray and I know, after many years in politics, that it is always easy to look back and think what might have been. I believe that the judgment of the House of Commons at that time was made under circumstances which they found persuasive. As I said, the compromise did not work and here we are working together, hopefully, on a solution that will better serve the people of Newfoundland.

We on the joint committee heard graphic testimony from parents and teachers that Mr. Justice Barry's concerns were well founded. Mr. Grimes told us of the steps the government took to comply with the injunction, including opening some 20 schools in addition to those the school boards had planned to open and operate during that school year. He told us that, in his view, "the opening of the 20 schools did not provide for a single enhanced educational opportunity for one student in Newfoundland and Labrador." He told the committee also that the Government of Newfoundland essentially found itself back in a position like the one that existed before the amendment to Term 17, where the school boards could not plan without the permission or consent of the denominational representatives. He said:

> We found ourselves in a situation where there was more insistence on rights in Newfoundland and Labrador than we had seen in probably 30 years...

Thus the government decided that another solution was required; not a compromise this time. Premier Tobin announced, in a province-wide broadcast on July 31, 1997, that a new referendum on education reform would be held on September 2, the day Newfoundland students were returning to school. This time, the question was very simple and straightforward:

> Do you support a single school system where all children, regardless of their religious affiliation, attend the same schools where opportunities for religious education and observances are provided?

In his speech, Premier Tobin stated clearly to Newfoundlanders and Labradorians what the opportunities for religious education and observances would be. He said:

> You will note we also talk about opportunities for religious education and observances. Let's be very clear about what that means. It means an opportunity for religious education for all of our students...not on a denominational basis, but on the basis of approved curriculum common to all of our students.
>
> Observances simply means that provision is made for Christmas concerts, plays, for a nativity scene or a Christmas tree in the class or school lobby. We're proposing a single school system with provision for religious education for our students.

Premier Tobin was not speaking alone or in a vacuum where only the government had a stake in this change.

The results of the referendum speak for themselves: 73 per cent of voters said this is what they supported. As individuals with some experience in elections and election results, I think we can all appreciate that this is a significant level of support that one does not see every day in political life.

In our hearings, we heard some witnesses question the referendum; whether voters truly understood either the process or the question. I must tell you that a number of witnesses, and even some committee members, took offence at the suggestion that Newfoundlanders would be confused by the question, that they somehow did not have a grip on what the referendum was all about.

Mr. Brendan Doyle, President of the Newfoundland and Labrador Teachers Association, responded by saying:

> Was the process fair and did people know what they were speaking about, unequivocally yes. I take strong exception to people outside the province who suggest it may have been otherwise. I was immersed in that debate, in that discussion, and there is no doubt in my mind it was clear. People knew what they were voting for.

The proposed Term 17 was passed unanimously by the Newfoundland and Labrador House of Assembly. All members but one were present for the vote. Jack Harris, the Leader of the New Democratic Party in Newfoundland and Labrador, told our committee:

> I think the people have spoken quite decisively both in terms of the numbers in the referendum and the unanimous vote of the —

— House of Assembly.

> I think it's extremely important because even those who voted no, even those who felt strongly about it themselves, supported the will of the people in the unanimous vote of the legislature.
>
> If this doesn't get a majority support in Parliament, I would be terrifically disappointed that the people of Newfoundland can't have their will expressed in the Constitution.

Some witnesses and committee members were concerned about the religious provisions of the amendment, wondering, for example, whether subsection (2), dealing with religious curriculum, and subsection (3), dealing with religious observances, somehow threaten the Charter right to freedom of religion or establish, as some called it, a state religion. Questions were raised about the possibility of removing those sections in order to leave the matters of religious education and observances to provincial legislation rather than the Constitution. Such suggestions were rejected both by those who supported and those who opposed the Term 17 amendment.

Doctor Bonaventure Fagan and of the Roman Catholic Education Committee told us:

> Let me make it unequivocally clear to you that we, at this point, are not interested in unfriendly or friendly amendments.

Gale Welsh of the Department of Justice of the Government of Newfoundland and Labrador explained to us the reasons for these subsections. I will use her words because of her knowledge both of law and the intent of the text. She said that subsection (2):

> ...is there to ensure that the province will have both the ability and the responsibility to provide for courses in religion. It is a constitutional obligation placed on the legislature. The people of the province can rely on it, it was guaranteed to them.
>
> The language in paragraph 2 is essential to give to the people of Newfoundland and Labrador the right they voted for in the referendum, an entrenched right to courses in religion, in the public schools, a right that the legislature cannot, in the future, deny or abrogate.

With respect to subsection (3) she said:

> It is the right of parents to request a religious observance to be held in a school. There is no requirement, such as where numbers warrant. A single parent could exercise the right, a single parent of any denomination. However, if parents do not want their child to participate, they are free to make that choice. Their children do not have to participate. These are the two fundamental propositions that flow from paragraph (3) of Term 17.

Ms Welsh concluded:

> Now, it's true that such a system may not be desirable in other provinces, but the proposed term must be assessed in light of the unique situation and history in Newfoundland and Labrador.

Anne Bayefsky, an expert in constitutional law, and some other witnesses, had raised questions about the compatibility of these sections of the term with the Canadian Charter of Rights and Freedoms, and others discussed their compatibility with the International Covenant on Civil and Political Rights. Senator Kinsella was particularly interested in this aspect.

•(2140)

In his appearances before the special joint committee and in his speech Monday in the other place on the resolution, Mr. Dion explained in detail why the proposed term would not violate either the Canadian Charter or the international covenant. He noted that it is well established that one part of the Constitution cannot be used to invalidate or repeal another, and this view was supported by, among others, Mr. Binnie and the former federal justice minister, the Honourable John Crosbie.

Mr. Dion also pointed out that the United Nations Human Rights Committee, which administers the International Covenant on Civil and Political Rights, is clear that religious instruction, even denominational, is permitted in public schools so long as children are not required to attend if their parents object.

Religion in the schools has been a central part of the Newfoundland tradition for decades. We heard from a number of witnesses that the particular balance struck in the proposed amended Term 17 was a fundamental element of what Newfoundlanders were supporting when they voted in the referendum.

The Rt. Reverend Donald Harvey of the Anglican Church of Canada was very clear about the importance of the proposed constitutional guarantee for religious education to the positive response of members of the integrated group. He said:

> I would like to tell the committee and I think I speak on behalf of the other church leaders that we would not have considered supporting legislation for a public school system, one which would take out some of the things we felt were very important there.

He indicated to the committee that they were very clear in their understanding of those sections of the amendment prior to their support for the referendum. It was also made clear to us that these assurances were very important as well to other Newfoundlanders in their decision to support the proposed amendment.

Let me quote from Oonagh O'Dea, a Catholic mother and a leading advocate of Education First, a non-political and multi-denominational group of parents and students who support a single school system attended by all children. She said:

> The voters of the province supported, through their vote, the retention of religious education within the curriculum and the opportunity for religious observation, observances. To change the amendment in order to remove religious education curriculum from the Constitution would be against what was voted on in the referendum. At this point in time, Newfoundlanders have indicated that they want to include religious education as a curriculum course. The option is there for students to opt out.

Another issue which I know has troubled some senators and others is the question of minority rights and, without doubt, this is a very important issue. For some, this point will never be resolved. However, I believe that the referendum results themselves provide a significant degree of reassurance this time. We were told that the consent of affected minorities is not required by the Constitution for this particular amendment. Nevertheless, Mr. Dion told the committee the Government of Canada believes that:

> Given this amendment's impact on minority rights, a mere 50 + 1 referendum majority would not have been sufficient nor adequate in measuring the degree of consensus among those affected.

In fact, 73 per cent of voters in the province supported this amendment. We know that it carried with the majority in 47 of Newfoundland's 48 electoral districts, including those districts which are heavily Roman Catholic and Pentecostal respectively. Newfoundland is a province made up of minorities; a 73-per-cent result necessarily cuts across denominational borders.

Let us not forget that when we talk about the integrated schools, we are not talking about a uniform Protestant majority; we are talking about four quite distinctive groups that came together in 1969 specifically for the purpose of cooperating in the education of their children. They remain distinctive, and I am one of them. They too voted in that referendum from their own special perspectives.

Few issues would produce reactions as profound, passionate and fundamental as the combination of religion and education. It is a mythical political day when any proposal produces unanimity among the electorate. However, the clear referendum majority did lead to a unanimous vote in the House of Assembly, which included support from all four Pentecostal members who represent districts with significant Pentecostal populations.

Mr. Graham Flight, a member of the House of Assembly whose district contains a large Pentecostal population and who himself voted "No" in the referendum, changed his position when the matter came to a vote in the House of Assembly. He voted in favour of the amendment, saying:

> I believe that now we have to move on. The people of Newfoundland have spoken in a very decisive manner$to amend the Constitution to accomplish the proposed education reform that this government is proposing, and, Mr. Speaker, I respect that decision.... I will support this resolution.

There is no question that we must exercise great care when we amend the Constitution, especially when we amend the Constitution to change rights. As Mr. Dion said on Monday, in speaking in the other place on the resolution:

> Changes affecting a minority deserve even greater prudence.

He went on to suggest the principles that could be applied, saying:

> In interpreting whether there is sufficient support to move ahead with this amendment of Term 17 we are proceeding on the principle that the level of support required for a significant alteration of entrenched rights or freedoms is directly related to the nature of the right or freedom in question.
>
> It is critical in this assessment to consider what rights are actually being affected. Let us be clear: in the case of Term 17 we are not talking about the freedom of religion or freedom of speech, which are fundamental freedoms explicitly protected as such in the Canadian *Charter* and many other international covenants. When a fundamental right is at issue, no referendum majority would justify a constitutional amendment. What we are facing in this case is not a fundamental right. We are talking about an entitlement resulting from a uniquely Canadian political agreement dating back to the time of Newfoundland's union with Canada.

No one has suggested that any religious denomination will be deprived of the right to establish, run, and operate denominational schools. Rather, the issue was the ability of denominations to finance such schools with the public purse.

We also heard a number of witnesses say that the protected denominations are not the real minorities affected here. The real minorities in the province are the Jews, the Buddhists, the Muslims, the people who have never had a voice in their children's education, who have had no choice but to send their children to be educated by a church whose beliefs the family does not share.

This point was emphasized by the testimony of the Newfoundland and Labrador Human Rights Association. While acknowledging their concern about any attempts to take away a right, they emphasized their full support for the proposed Term 17 amendment in these words:

> Basically, if you are Roman Catholic you have that right —

That is, to have children educated in schools controlled by your own denomination.

> If you're Jewish, you don't. It's as simple as that.

I also want to note that the Association of Francophone Parents of Newfoundland and Labrador conveyed their support for the proposed amendment, telling us that they are satisfied that their rights under section 23 of the Charter are being fully met, and that they are satisfied with the conduct of the Newfoundland government.

We also heard concerns from a representative of the Labrador Métis Association. When he next appeared before the committee, Mr. Grimes told us that there would be nothing in the proposed new term that would in any way preclude the Métis from full rights and treatment to which they have access under the current system.

Honourable senators, as you can see, we heard a great deal of very powerful, very passionate and heartfelt testimony on a wide range of issues. We heard from some Roman Catholic and Pentecostal witnesses who expressed great concern for the future of their children's education because of their conviction that one's faith and religion must permeate all aspects of one's everyday life, and their fear that this will be lost without church-run denominational schools.

Other people testified that they believed that the responsibility for ensuring the continuance of daily religious presence would rest with the cooperation between the parents and the churches. As one Roman Catholic teacher and parent expressed it:

> I'm of the view and the opinion that the religion is not in the school. The religion comes into the school with the children.

He strongly supported this proposed amendment.

We also heard testimony about chronic problems of the current system which cause stress and unhappiness for both children and parents. Let me single out two stories which underline some of the very practical, everyday concerns.

We heard from one witness about a Grade 7 student who lives just outside St. John's. In the denominational system she must bus past several schools before she reaches her school. In order to attend five hours of instruction, this young student must spend nine hours away from home. She also must forego all after-school activities that would take place at the school unless she can get a ride home afterwards. This scenario, we were told, is repeated across the province.

One father who is a professor of political science at Memorial University told us of his concern. He said:

> There is, and has been, little money available. Schools are often bare, poorly equipped and poorly landscaped. Libraries, even in better schools, have few books. In some a book cart will suffice. I looked in my son's high school library$browsed the Canadian politics books and found the most recent one was 1972. I think you understand the problem. Supplies are scarce, and parents often have to raise funds for basic needs — paper and chalk, as well as computers.

We also heard very serious concerns about problems surrounding teachers' rights in the denominational setting, particularly as expressed by the teachers' association president, Mr. Doyle. He cited examples of teachers with many years of experience and exemplary records who were denied access to schools because of their religion:

> We don't have the protection contained in the Charter of Rights and Freedoms.

Honourable senators, throughout our hearings, there was one question which consistently found its way through both testimony and discussion: What about the children; what are their views?

We made an effort to talk with them in St. John's and in Corner Brook through the magic of videoconferencing. Not surprisingly, they also had conflicting views, some based on strong religious convictions, others on a natural pride of their school, and still others on a sense of frustration that a continuing adult preoccupation with this issue was detracting from their own education and development.

With almost no time to prepare, they added a fresh perspective to our hearings. I was struck by two commentaries which I will share. One student, the representative from Deer Lake Pentecostal School, while strongly supporting her school, made an equally strong statement for improving the quality of education. She said:

> I think it's pretty pathetic that there's students who sit next to me and at third-level language class who don't know how to write an essay...

She said some do not know the complete parts of a sentence. She went on to say:

> I think that the main issue about education in Newfoundland shouldn't be whether we are going to be separated...

She said the main question should be: What are the fundamentals of education being given to Newfoundland students?

Another integrated school student summed up her views as follows:

> Before closing time, I'd like to say that I would like to see this passed. I really would. I think it would be a good thing. Especially nowadays with everything about equality and everything, we're being segregated on the basis of our denomination. It seems so petty to me. It honestly does, that people would have to sit around for hours and debate and discuss because we're separated by our denomination. There's so many other problems with our education system that people could be worrying about, and we're sitting around talking about what school you're going to go to because of what church you go to...

> Yes, we're giving a message, and we're still being segregated right down to elementary schools. What kind of message is this giving to elementary kids? I live next door to my best friend, but I can't go to the same school as him because he goes to a different church than I do.

Honourable senators, we must also bear in mind the importance of timing on Newfoundlanders and the effect that uncertainty and delay will have on the children of the province. One witness told us:

> I have to say there is stress on our children. We have children who do not know where they are going to school next year when they graduate from the existing schools. And they didn't know last year. And they were all asking their parents where do I go, and come January and February, when we have to register these children for senior high credits, we don't know where to send them.

Mr. Grimes told us that the province is already on the verge of not being able to make the changes to the school system in time for the new school year, next September, which would not only extend the uncertainty for Newfoundland children but would also deprive students of benefits of the proposed changes for yet another year.

We should also bear in mind what Mr. Dion told the committee in our final hearing. He said:

> ...it should be noted that any alteration to the proposed amendment would mean that the Government of Newfoundland and Labrador could only achieve reform by restarting the process in the House of Assembly. This would be tantamount to having the federal Parliament initiate a change to a term of union in a field entirely within provincial jurisdiction. In light of this, we would have to have very compelling reasons even to justify altering the proposed amendment.

Honourable senators, I have gone on, I know, a very long time. We have been here in this chamber a very long time today. However, these committee hearings have been as challenging as any in which I have participated since coming to this chamber. We have heard the strength of the conviction of those denominations and parents and teachers who remain adamant that this amendment should not pass.

We have heard the conviction of other parents and teachers, strong in their religious beliefs, but also strong in their desire for change. We have heard the confusion and the frustration of students who want attention paid to their education system. We have seen the strength of the democratic process where each citizen of Newfoundland and Labrador had the choice of opposing, supporting or abstaining —

The Hon. the Speaker: I regret to interrupt the honourable senator, you her 45-minute speaking period is over.

Senator Fairbairn: I am winding up. May I have leave to complete my remarks?

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

Hon. Senators: Agreed.

•(2200)

Senator Fairbairn: Honourable senators, I repeat that we have seen the strength of the democratic process where the citizens of Newfoundland and Labrador each had the choice of opposing, supporting or abstaining in an open and clear referendum, and 73 per cent chose to support change. We have seen the elected assembly come together unanimously to support the direction of the people who voted, a majority in 47 out of 48 districts. We know that further delay will thwart the will of that majority by preventing the desired changes to the education system for another year.

Last evening in the other place, in a free vote, the resolution passed amending Term 17 by a vote of 211 to 53.

Honourable senators, we also will be engaged in a free vote on this issue. Each of us has an equal choice when the resolution is before us. We can vote against it, we can use our suspensive veto to halt further action by this Parliament for the next six months, or we can hear the voices of a concerned majority of Canadians in Newfoundland and Labrador who, while respecting their religious traditions, are asking for our help to change their education system to allow all their children to learn together.

This is a huge responsibility for each of us, and for the Senate as an institution. I would encourage colleagues to consider carefully the message from Newfoundlanders and Labradorans who have cast their ballots for change. I would encourage colleagues to support their decision.

Hon. Consiglio Di Nino: Would the Honourable Senator Fairbairn entertain a question or two?

Senator Fairbairn: Yes.

Senator Di Nino: First, I wish to congratulate my honourable friend on her presentation. As usual, her address was well articulated.

Honourable senators, during the debates less than 50 years ago on whether Newfoundland would join Canada, this issue was discussed extensively. The term "enshrined" is used in the Constitution to indicate the strength of the commitment of those who made this gesture to Newfoundlanders. If the Constitution had not contained this provision, do you believe the people of Newfoundland would be part of Canada today?

Senator Gigantès: How does one know?

Senator Fairbairn: Honourable senators, that is a question, of course, that I cannot answer. My colleagues from Newfoundland might be able to speculate from their personal experiences in their province.

Unquestionably, this has been a very important and critical issue for Newfoundlanders, not just at Confederation, but long before. Recent history is full of debates on the education system — how it has developed, how it is thriving, and whether a change is necessary. A number of efforts have been made to get all of the groups together to make a change that does not involve a constitutional amendment.

These discussions, as I recall them, have gone on not for the last two or three years, but for many years. Conclusions were made as a result of these discussions, and ultimately we are here today with an application from that province that follows a referendum and, of course, a vote in the legislature.

Honourable senators, I cannot decide what is right for Newfoundlanders. That is why I say that this is a huge responsibility on the people in this Parliament and the people in this chamber. I can only speak for myself but, on the whole, I find myself listening. Our committee heard from many voices. We read many briefs and received much information. There is a democratic process in this country, and I have been moved to weigh the results of that democratic process in the Province of Newfoundland and Labrador.

Senator Di Nino: I respect that, honourable senators. Certain minorities within that community have written members of this chamber saying that they do not agree with the changes to the Constitution proposed by the referendum held in Newfoundland. Is it not our responsibility — or are we abdicating that responsibility as well — to ensure that the rights of minorities are respected? Is this not one of the main reasons that this institution was created by the Fathers of Confederation?

Senator Fairbairn: Honourable senators, of course I agree that there are loud voices in Newfoundland within minorities who disagree profoundly with these changes. However, very strong voices within those minorities have told us with equal passion and vigour that they support the changes. In this proposed amendment, they see the inclusion of guarantees for religious education and religious observances. They see that as a sufficient commitment to justify the change.

This is also a very important part of this debate, and a part that we, as senators, must listen to. Yes, there are strong minorities. As I said in my speech, there are not just two minorities in Newfoundland. Among the protected churches, there are a whole set of other minorities. They, too, voted and have expressed their views, and they feel strongly that this change is acceptable.

Of course, there are the other minorities for whom, for a long time, no one has spoken, and they are the minorities who lie outside the protected groups. In the end, I believe that the only way of responding to this issue is to evaluate the compromise.

Senator Di Nino: Obviously, each one of us will do that.

Once again, I applaud my colleague's eloquent articulation of this issue. I heard her speak of the other minorities. However, I am sure the honourable senator will agree with me that many people are still alive today who voted to join Canada. One of the reasons they voted to join Canada is that this particular provision was contained in the Constitution. I repeat that it was enshrined in the Constitution of this country. Does my honourable friend not feel that we are betraying the wonderful people of the Province of Newfoundland and Labrador who, in effect, may not have voted to join this country had that provision not been contained in the Constitution?

Senator Gigantès: How does my honourable friend know that?

•(2210)

Senator Fairbairn: Honourable senators, I conceded at the beginning of my remarks that, of course, there are people who, at the time of Confederation in 1949, considered this to be an important consideration. I cannot speculate, and will not speculate, because I was not there. Certainly, there were people, who are still alive today, who voted in a referendum at the time of Confederation.

Throughout the committee hearings, we made every effort to try to show profound respect for the differences of opinion that were presented. I believe Senators Kinsella, Murray, Pearson and Gigantès would agree.

When we judge how systems work over a period of time, we recognize that people change. They change their minds. Circumstances change people's minds. In this instance, we heard eloquent remarks from those who share the perspective of my friend who would like to see the system continue as it is. There are strong voices in Newfoundland who wish to retain religion in their educational system, but they want that system to change.

Hon. William J. Petten: Honourable senators, I was one of those who voted to join Canada in 1949. I continue to say that I am a new Canadian, and I am. It was very important vote to me at the time. I voted in favour for the current school system to continue. However, now, after 50 years of seeing how the other educational systems work and still paying attention to what those in my own province are saying, I recognize that the majority of the minorities voted for this. In fact, 73 per cent voted in favour of it. Some 47 districts out of 48 districts voted for it.

As I say, I voted to join the union, and this educational system was part of it. Now, after 50 years, I want the best education for the children of Newfoundland. That is why I will be voting in favour of the resolution.

Senator Di Nino: Might I ask the Honourable Senator Petten a question, honourable senators?

Would the honourable senator agree that education is a fluid process which we should consider amending at reasonable times, but that, when we enshrine something in the Constitution, it should not be taken as lightly as some other legislative step which can be changed at the will of the people who happen to be in Parliament at a particular point in time? That is the point I am making.

Would the honourable senator not agree that this is much more sacred than any ordinary piece of legislation?

Senator Gigantès: What is the point of constitutional amending formulas, then?

Senator Petten: Exactly. Why do we have a constitutional amending formula if we are not going to use it? In this case, I am firmly convinced, as is the honourable senator of his point of view, that we are doing the right thing, and I will vote in favour of it.

Senator Di Nino: With due respect, I disagree.

On motion of Senator LeBreton, for Senator Doody, debate adjourned.

BUSINESS OF THE SENATE

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, there is agreement on both sides that all other items on the Order Paper stand.

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

Hon. Senators: Agreed.

The Senate adjourned until tomorrow at 2 p.m.

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