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OFFICIAL REPORT
(HANSARD)

Tuesday, September 29, 1998

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Tuesday, September 29, 1998

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

Prayers.

NEW SENATOR

The Hon. the Speaker: Honourable senators, I have the honour to inform the Senate that the Clerk has received a certificate from the Registrar General of Canada showing that Vivienne Poy has been summoned to the Senate:

INTRODUCTION

The Hon. the Speaker having informed the Senate that there was a senator without, waiting to be introduced:

The following honourable senator was introduced; presented Her Majesty's writs of summons; took the oath prescribed by law, which was administered by the Clerk; and was seated:

Hon. Vivienne Poy, of Toronto, Ontario, introduced between Hon. B. Alasdair Graham, P.C., and Hon. Lucie Pépin.

The Hon. the Speaker informed the Senate that the honourable senator named above had made and subscribed the declaration of qualification required by the Constitution Act, 1867, in the presence of the Clerk of the Senate, the Commissioner appointed to receive and witness the said declaration.

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, someone once said that clothes and manners do not make the man, but when he is made, they greatly improve the appearance. Those of my colleagues who are thinking of improving such things but have put it off, believing that beauty is all in the eye of the beholder, may be reassured in knowing that Senator Vivienne Poy, who has an unfailing creative eye for working with the basics, is now among us.

For Vivienne Poy, a fashion designer, entrepreneur, author, and historian, the ability to see the world in a grain of sand has always come naturally. The first Canadian of Chinese descent to be appointed to this chamber, she represents a community gifted with a rich historic culture. It is a culture which has cherished families and communities, which has cherished hard work and service to others, which has cherished values such as peace and cooperation and respect for the common good, and which has cherished music, literature and the arts.

Chinese-Canadians have brought a special genius to their chosen country, with outstanding achievers in all walks of life: as craftsmen and architects, as broadcasters and athletes, as molecular biologists and lieutenant-governors, as cabinet ministers and geneticists, as journalists and entrepreneurs. They have become, individually, leavening agents of progress and advance in Canadian life and society, enriching all Canadians and further strengthening national unity in the process.

"Fashions fade but style is eternal," was Yves St. Laurent's famous remark. Style is about many things, honourable senators. Style is about grace and culture and intellect and a love of beauty. Senator Poy brings all these qualities to the Senate of Canada, and she brings other fine attributes as well. She brings a deep devotion to family and community. She also brings a fierce dedication to education.

Vivienne Poy has an impressive academic background. She has been honoured in her native Hong Kong, in England and in Canada. Senator Poy is also a governor of McGill University, and last year received an award for outstanding volunteer service to the University of Toronto. Her extensive community endeavours include serving as a trustee at the National Gallery of Canada, and as an honorary patron of the Chinese Cultural Centre of Greater Toronto. Senator Poy brings to this chamber all the natural qualities of leadership that won her the International Women's Day award in 1996 and made her an outstanding member of the Women Entrepreneurs of Canada.

"The scholar seeks, the artist finds," it was once said. In Senator Vivienne Poy, we welcome the spirit of the academic who searches for the truth and we welcome the soul of the artist who finds it. In this chamber where the search for what is right is our continuing duty and privilege, we will find Senator Poy a reflective, energetic, creative, and, yes, a stylish comrade in arms.

Senator Poy, we offer a most sincere welcome to this chamber.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, while there is little that I can add to what the Leader of the Government has said regarding our new colleague and her background, I do want to mention that in the notes distributed by the Prime Minister's Office, it is said that Senator Poy "founded Vivienne Poy Mode in 1981, and over the following 14 years enjoyed great success." There is no doubt in my mind that the fact that there was a Conservative government in place during nine of those years is not foreign to the great success that she enjoyed, a success shared by many small businesses across the country during that period.

When senators are named, there is widespread interest in knowing all about their qualifications, unlike what happens following an election to the House of Commons, when a member's party affiliation is all that most people are interested in. This arises from the expectation that, whatever one's feelings about an appointed Senate, those called to serve in it are expected to bring with them special attributes that can be beneficial to Parliament as a whole. That this is the case is supported by the fact, as I do not hesitate to repeat whenever the occasion arises, that the diversity of backgrounds, ability, knowledge and commitment residing in the Senate of Canada is at least equal if not greater than that found in any elected legislature in Canada, be it federal or provincial. I have no doubt that Senator Poy's contributions here will but serve to reinforce that undeniable fact.

•(1420)

Senator Poy, all best wishes to you as you assume your new responsibilities.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I call your attention to the presence in the gallery of His Excellency Rinchinnyamyn Amarjargal, Minister of Foreign Affairs of Mongolia, accompanied by his wife Madam Balormaa, and His Excellency Jalbuu Choinhor, Mongolian Ambassador to Canada.

Mr. Foreign Minister and Mr. Ambassador, we welcome you to the Senate of Canada.

THE LATE HONOURABLE FLORENCE B. BIRD

TRIBUTES

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, last Saturday a memorial service was held here in Ottawa for one of our former colleagues, the late Florence Bird, who passed away in July of this year.

Before coming to the Senate, Florence Bird was a long-time print and then broadcast journalist and news commentator at the CBC from 1941 to 1967. Senator Bird's pen name was Anne Francis. I can still hear that famous, familiar voice and the words, "This is Anne Francis, reporting from Ottawa."

I should like to recommend to all honourable senators the 1974 autobiography of Anne Francis. In it, Florence Bird described her silver-spoon upbringing in Philadelphia and her marriage to John Bird, a South African by birth, who had become a respected long-time Ottawa journalist with *The Financial Post* and a former chief of Southam news services.

During the Great Depression, Florence Bird would see the breadlines in Montreal. It was when she became actively involved in the war effort that she began to use the pen name Anne Francis. This was the name she borrowed from a great grandmother to avoid embarrassing her husband with her feminist ideas, she always said. However, for those who had the great privilege of knowing the remarkable woman appointed by Prime Minister Lester Pearson to lead this country's first Royal Commission on the Status of Women in 1967, there may also have been just the need to be perceived as independent from her highly regarded husband.

When Senator Florence Bird was appointed to this chamber in 1978, she already had an enormous reputation as a timeless woman who towered over party politics. I was one of those who knew well her passion for the rights of minorities and her continuing involvement in women's rights in this country. Florence could cut to the quick in argument, but she could always look with the heart.

She produced one of the finest, most significant royal commission reports of our time, a report that sold out in three days. It literally woke up Canadian women to the inequities in the system; a system that was so deeply ingrained that it seemed impossible to imagine that there might be much about it that was just not right.

At another time, on another issue, after the settling of the famous "Persons Case" in 1929, Nellie McClung struck the nail on the head when she said:

> It came as a distinct shock to many Canadian women, who had not known they were not persons until they heard it stated that they were.

Honourable senators, that same kind of a shock electrified this country in the wake of the report on the status of women. Women who had lived and worked on an unleveled playing field for years began to see the full extent of the inequities. They had not known that they were only partial citizens in this country until they heard it stated that they were.

Florence Bird, who died on July 18, was a triumph of a human being. She was a triumph in her work with refugees, with the elderly and with the dispossessed. She was a triumph in her fair-mindedness and her passion for the truth.

On this, the eve of the fiftieth anniversary of the commemoration of the "Persons Case" and the Famous Five who secured that victory, we think about a woman who inherited the mantle of those wonderful fighting Albertans — individuals from a province where that particular penchant haunts us still; yes, we think about the spirit of Florence Bird, a timeless woman who towered over party politics.

We remember the words of Charlotte Whitton, a former mayor of this great city:

> Whatever she does, a woman must be twice as good as any man to be thought of as just half as good. Luckily, it's not that difficult.

We extend to all the friends and family members of the late Florence Bird an expression of warmth and deep sympathy.

Hon. Mabel M. DeWare: Honourable senators, I rise today on behalf of my colleagues on this side of the chamber to honour the memory of the Honourable Florence Bird, who passed away in July.

This extraordinary woman contributed her time and talents as a senator from 1971 to 1983. That was before the arrival here of many of us. Florence Bird's reputation as a dedicated parliamentarian lives on. Indeed, I myself did not have the pleasure of knowing her personally but, like so many others, I was privileged to witness the efforts she made on behalf of Canadian women for most of a lifetime.

Florence Bird worked as a journalist for many years, though most Canadians knew her at the time as Anne Francis, which was her pen name. Notably, she was a news commentator for the CBC from 1941 to 1967. She also produced documentaries on women's rights and international affairs.

In recognition of her commitment to women's advancement, Florence Bird was asked to chair the pivotal Royal Commission on the Status of Women. That commission reported in 1970. In part because of her success in that role, she was made a Companion of the Order of Canada in 1971, the same year that she was appointed to the Senate.

Her friends described her as a down-to-earth woman, but proper. Even after her retirement from the Senate in 1983, Florence Bird continued her vocation of working tirelessly and passionately for the betterment of women. When we look back at her lifetime of effort, in large measure she succeeded.

Honourable senators, Canada is indeed a poorer country without the Honourable Florence Bird; yet it is immeasurably richer because of her.

[*Translation*]

Hon. Lucie Pépin: Honourable senators, I am privileged to have this opportunity to say a few words in tribute to Senator Florence Bird. A gifted journalist, a devoted friend of humankind, an indefatigable champion of women's rights, Senator Bird was an exceptional Canadian who contributed to the expansion of women's rights and prospects within Canadian society.

Senator Bird gave the women of this country a second wind. After Nelly McClung and Thérèse Casgrain won us the right to vote, Florence Bird and her colleagues on the commission worked unceasingly to implement the mechanisms which have generated all the changes that have taken place for women in Canada.

We all have memories of the energy with which Florence Bird served the people of Canada, the women of this country in particular. Her keen interest in human rights and her experience in international affairs were invaluable assets in the performance of her parliamentary duties.

The place Florence Bird will hold in our collective memory, however, will be linked to her accomplishments as Chair of the Royal Commission on the Status of Women in Canada.

With 20 years as a journalist and communicator behind her, Florence Bird was the first to convince the media that the commission's public hearings should be televised Canada-wide, thus giving women a stronger voice.

[*English*]

•(1430)

Housewives, teachers, convicts — their lives were different but their experiences were joined by a single thread: all were in some way disenfranchised in a world built around the privilege of man. The impact on Canadian society was both profound and irreversible. The hearings of the Royal Commission on the Status of Women marked a turning point in the development of the Canadian consciousness. There would be no going back. Women across the country were determined that their place within Canadian society was going to change.

Honourable senators, the commission's report was nothing less than a blueprint for social change. Florence Bird and the other members of her commission challenged governments at all levels to take action on a wide range of legal, social, health and economic issues. They called for the creation of human rights commissions to protect the rights of individuals, and changes to human rights legislation that would prevent sex as a ground for discrimination. The commission called for legal equality between husband and wife, and changes to family law that would ensure the equitable partition of family property.

The commission made strong recommendations for easier access to abortion and for paid maternity leave, equal pay, child care and the restoration of aboriginal status to thousands of native women and children who lost their rights because of discriminatory legislation.

The commission also called for the creation of government-funded advisory councils on the status of women to conduct research and provide independent advice on the status of women in Canada.

[*Translation*]

I got to know Senator Bird when I became Deputy Chair and then Chair of the Canadian Council on the Status of Women. It was at that time that the Persons Case was launched in cooperation with Status of Women Canada. The offices of Senator Bird and Senator Yvette Rousseau served as refuge, court of appeal and rallying point whenever we wanted something from the government or needed support.

Like Senator Thérèse Casgrain, Senator Bird came from a privileged social background and, were it not for her interest in social justice, would never have come to know about women's daily lives.

I have focussed on only one aspect of Senator Bird's rich career. The reason is that, without Florence Bird and her tireless commitment in support of women's rights and justice for all, Canadian women would not be enjoying the many rights and opportunities for growth they do today.

[*English*]

Florence Bird always believed in giving something back to society. In her retirement, she was an outspoken advocate of seniors' rights and gave generously of her time and wealth of experience to a variety of causes. Her vigour and full engagement with life were a tremendous example of the invaluable contribution seniors can make to the community around them.

We are all deeply indebted to this inspirational and forward-thinking woman.

Hon. Joyce Fairbairn: Honourable senators, I am pleased today to take a few moments to celebrate the memory, the achievements and the very presence of the late Florence Bird in the life of our country.

We remember her in this place as a former senator who added great credibility, substance and spirit to an image of the Senate during her years here, from 1978 to 1982. Her contribution to this country and, in particular, to the women of this country, is legendary.

Florence and her husband, John, were friends of mine who gave me enthusiastic support, encouragement and advice when I entered the Parliamentary Press Gallery 36 years ago. Both of them were understanding persons and journalists. They were very kind, full of laughter and loaded with principles.

I was in awe of this woman, whom I had always known as Anne Francis, and was intrigued to learn that she had taken the name of her great grandmother as a professional pseudonym — partly so she could build a career on her own, without suspicion that her husband had helped her get the work and also, as she said with a wink, to spare John from being burdened by any of her public statements with which he did not agree.

As a young girl growing up in southwestern Alberta, I had listened with fascination to the voice of Anne Francis on the CBC from Ottawa. My mother and all her friends had been listening to that voice for years, not only because she did a terrific job of commenting on national issues but also because it was the voice of an articulate, competent woman at a time when journalism and, in particular, broadcasting, was truly a man's world.

She both wrote as Florence and spoke as Anne in Canada and from abroad, establishing a standard of excellence wherever she went. At the heart of her efforts was a deep concern for the well-being of women, wherever they lived.

Florence was an imposing woman herself — very tall, with a head of white hair that was always struggling to get out of the bun in which she tried to arrange it. She had striking blue eyes and a Bryn Mawr accent from her Philadelphia youth, which gave her a somewhat patrician air, but a smile and a laugh that blew away any sense of pretension.

After years of working and living in Winnipeg, in Montreal and around the world, the Birds settled in Ottawa. In the 1950s and 1960s they were at the heart of public affairs here because of their journalistic careers and the very strength of their personalities. Florence accelerated her concern and involvement with the efforts of women to find their place in a rapidly changing world of work. Having moved along a solitary path on her own for so many years, she was appalled at the barriers which continued to stand, unmoving, for so many others.

It was with great zest that she took on the task offered to her in 1967 by Prime Minister Lester B. Pearson to head the Royal Commission on the Status of Women. It was revolutionary and an inspirational assignment. Through its outstanding cross-country hearings, ending with the report and the 167 recommendations which have changed our lives, Florence became known as the leader of modern feminist movement in Canada. She relished that profile right to the end.

Florence gave an interview only days before her ninetieth birthday last January. She said, with spirit:

> I am an unrepentant feminist. Why not? I can't imagine what else a thinking person could be.

We could not have had a finer advocate. It was with that spirit that she came to the Senate in 1978.

Later that same year, her husband John died. She described him as being more important to her than anyone else she had ever known. In her final comments when she retired from this place, she noted the sense of loss she had felt, after 50 years of a deep marriage, and she expressed her gratitude to the understanding and the generosity of her new colleagues here for helping to lead her out of her sadness and into a new phase of her career.

•(1440)

Her contribution to this institution was strong and determined, underlining all the causes she had fought for all her life: fair pensions for both men and women, support for families, attention and help for children at risk through poverty and abuse, and always, equal access and equal opportunity for women, whatever their status, wherever they lived and worked, whether in the home or the workplace.

Honourable senators, her speeches during the constitutional debates of the early 1980s eloquently expressed her passion for this country and her strong belief in a Charter of Rights and Freedoms for all Canadians.

She also believed strongly in the Senate itself, and to the end, she advocated change to make it and all of us more effective in our work on behalf of Canadians. Her final words to us were:

> I think that it is our job to see that this great country remains strong and undivided for all its people.

For all of this, she was honoured frequently. Those honours included the Order of Canada and the Persons Award in memory of the five Alberta pioneers who helped to open the doors of this chamber to women in 1929.

Honourable senators, as we extend our sympathy and warmest thoughts to relatives and friends of Florence today, I should note that although she and John did not have children, the leadership that she offered to the women of this country in effect created for her a very large and adoring family.

I am one of those "daughters." Privately, I always called her Anne, much to her delight, and I will remember her always with admiration, with gratitude, and with great affection.

Hon. Peter A. Stollery: Honourable senators, I would like to pay my respects to the memory of the remarkable Florence Bird. In 1955, when I first met Florence Bird, I confused the name "Anne Francis" with "Arlene Francis," who was one of the panellists on *What's My Line.* I remember my father saying that I should meet this remarkable women, Anne Francis, and I could not help but wonder how he would know Arlene Francis of *What's My Line?*

Little did I know that when I came to the Senate in 1980 I would find myself sitting behind Florence Bird, would have the opportunity to become very friendly with her and would come to realize what a sensible person of substance she was.

I have never forgotten Florence. She was one of the most extraordinary people I have ever met. I consider it a great honour and pleasure to have become a friend of hers here in the Senate, where we do sometimes have some quite unusual people. She was certainly one of them.

I would be remiss if I did not rise today to pay my respects to that remarkable former colleague of mine.

Hon. Joan Fraser: Honourable senators, it is a particular honour for me to have been asked to add my voice to the tributes to Florence Bird — journalist, feminist, royal commissioner and senator. Florence Bird was a woman of intelligence, charm, passion and boundless energy. Her work as head of the Royal Commission on the Status of Women helped to liberate all the women of my generation and to create a new world for our daughters.

She was only 19 when she met her future husband, John Bird. When courting her, he did so in part in Latin verse. She wrote in her diary:

> John Bird says I have very good stuff in me. He thinks some day I can develop into a real person if I work on it.

John Bird was right. She did have very good stuff in her.

They came to Canada in 1930, and in Montreal they became friends with a generation of brilliant Canadians; people like Norman Bethune, Frank and Marian Scott, Eugene Forsey, Carl Goldenberg and Blair Fraser.

When she became a journalist, she broke spectacularly out of the ghetto to which women journalists were confined. It was not until she was well established as a commentator on international affairs that she turned her hand to writing a cooking column. This was not the normal career pattern for journalists of the time, but it made it much easier for those of us who came after to have had such a splendid example of what women could do.

It is hard to remember now just how things were in 1967 when Florence Bird was named chair of the famous Royal Commission on the Status of Women. Let me cite three examples. In law, there was no legal right to abortion in Canada. In the work world, it was almost universally assumed that, as one little girl told a member of the commission's staff, a boss is a "he," not a "she." In Parliament, there was a grand total of one woman in the other place and four women in the Senate.

Many of us here today probably remember how the creation of the Royal Commission was greeted with derision from coast to coast. The *Ottawa Journal*, for example, editorialized condescendingly about "these girls." The *Vancouver Sun* said the commission was probably doomed to be "a wailing wall for every scatterbrain, malcontent and frustrated pope in a skirt."

However, Florence Bird and her fellow six commissioners persevered. They received nearly 500 briefs, 1,000 letters, conducted 30 research studies, I believe, and, above all, they held hearings throughout Canada.

[*Translation*]

As happened with the other great inquiry of the time — the Royal Commission on Bilingualism and Biculturalism — these hearings woke the country up. The commissioners heard expert witnesses and women who often told tragic stories. I remember, for example, one young woman who had travelled 500 miles to make a single point with the commissioners: that a 13-year-old girl should not be forced into marriage simply because she was pregnant.

[*English*]

By the time the commission reported in 1970, and thanks to its work and to its galvanizing report, public attitudes toward women's issues had shifted dramatically. The same *Ottawa Journal* that had written of "these girls" greeted their report as "calm, deliberate. Lucid...almost agonizingly relevant." Its recommendations ranged from maternity leave, to pensions, to the rights of native women, and further. They were not all implemented at once, of course, but over the years, in one way or another, almost all of them have been put into practice.

Canadian women can truthfully say, "If you seek Florence Bird's monument, look around you." She was showered with honours, all deserved, and she lived to see the world transformed for the better by her work. Those of us who came after her stand forever in her debt.

[*Translation*]

SENATORS' STATEMENTS

UNIVERSITY OF OTTAWA

CELEBRATION OF
ONE HUNDRED AND FIFTIETH ANNIVERSARY OF FOUNDING

Hon. Gérald-A. Beaudoin: Honourable senators, the great democracies hold their institutions in high esteem.

Last week, the University of Ottawa celebrated its 150th anniversary. Clerks Paul Bélisle and Robert Marleau, and the parliamentary librarian, Richard Paré, held a special convocation in the Parliament of Canada to celebrate this event within our walls. I wish to congratulate and thank them. Rector Marcel Hamelin, the Chairman of the Board of Governors, Richard Bertrand, Vice-Rector Jean-Michel Beillard and Secretary Pierre-Yves Boucher honoured us with their presence.

That same day, the Honourable André Ouellet unveiled a stamp commemorating the University of Ottawa.

[*English*]

•(1450)

The University of Ottawa is unique in North America. This university is bilingual. Its faculty of law is not only bilingual but "bijuridical." Common law is taught in both English and French, and civil law is now in the same situation. This, in my opinion, is unique in North America, if not in the world.

[*Translation*]

Many graduates of the University of Ottawa work in the Parliament of Canada at various levels. I am proud to have been dean of the law faculty for 10 years and a full professor for 20 years, to have headed the Human Rights Centre from 1986 to 1988, and to have been a professor emeritus since 1994.

Bravo, I say. Long live the University of Ottawa.

[*English*]

VETERANS AFFAIRS

RECOGNITION OF RIGHTS FOR
MERCHANT NAVY WAR VETERANS

Hon. Norman K. Atkins: Honourable senators, like many in this chamber, I am concerned today with the situation that is unfolding outside on the steps of the buildings on Parliament Hill: that is, the hunger strike by two elderly members of the Merchant Navy War Veterans Association.

Since the end of the Second World War, these brave Canadians have fought for recognition and equality with their brother and sister veterans of the three armed services. They have fought their battle with great resolution but little results since 1945. That is 53 years ago. I do not agree with hunger strikes, but we must look behind this matter and recognize that these extreme measures are generated by extreme frustration over government inaction.

Very recently, the Royal Canadian Benevolent Fund included Merchant Navy veterans as part of the navy forces of Canada, and today provides assistance to those Merchant Navy veterans who apply and are qualified. The RCN Benevolent Fund was established in 1943.

Honourable senators will remember that former Senator Jack Marshall, now Grand President of the Royal Canadian Legion, worked tirelessly on the Merchant Navy war veterans' cause for recognition and equality, and at one point introduced a private members bill to achieve that end. Unfortunately, that bill was deemed by the Speaker to be a money bill, and was lost on a subsequent vote — a vote, I might add, where I personally voted against the Speaker's ruling, as did many Liberal senators who are still in this house today.

Honourable senators, partly due to Senator Marshall's steadfast work, then Minister of Veterans Affairs in the Mulroney government, the Honourable Gerald Merrithew, moved forward in 1992 with Bill C-84, the Merchant Navy Veterans and Civilian War Related Benefits Act, which righted many wrongs of the past but did not end the unequal treatment of Merchant Navy war veterans. They have yet to be treated equally under the law with other veterans, and they have yet to be compensated.

How could anyone know that Bill C-84 would need to expressly state such things as that Merchant Navy war veterans be allowed to lay a wreath on Remembrance Day, of all days. This insensitivity to those who sacrificed their lives for us is beyond comprehension.

Honourable senators, Senator Forrestall's private member bill, Bill S-19, the Merchant Navy War Services Recognition Act, which was introduced in June of this year, will attempt to redress some of the past wrongs. If and when enacted as law, it will offer recognition to Merchant Navy war veterans in its preamble. Indeed, it might even serve as an apology.

Bill S-19 requires all future government legislation to treat Merchant Navy war veterans the same as other veterans in terms of benefits, and ensures a level playing field. It includes Merchant Navy war veterans in Remembrance Day services, a matter which is long overdue.

This is not a money bill. Bill S-19 is a bill of rights, a bill of social justice. The bill grants recognition. I hope that all of my colleagues in this house will support it.

Honourable senators, I am told that the Minister of Veterans Affairs is preparing an omnibus bill which will end all discrimination against Merchant Navy war veterans, but it has yet to appear. It is long overdue. I hope it is introduced in the near future because two former merchant seamen are so frustrated that they are now prepared to demonstrate their commitment to obtaining recognition and compensation for their colleagues.

The Hon. the Speaker: I regret to interrupt the honourable senator, but you are well over the allowable time period.

Is leave granted for the honourable senator to continue?

Hon. Senators: Agreed.

Senator Atkins: Until this issue is resolved justly, Canadians will have a spectacle before them of elderly veterans subjecting themselves to serious health risks on the steps of the buildings of Parliament Hill. This is unacceptable to me and, I am sure, to other honourable senators, as well as to all Canadians.

Honourable senators, it is time to deal with our past and correct our mistakes while there are still over 2,300 Merchant Navy war veterans left alive. They should know that we care, and that we truly appreciate their efforts in the name of our freedom.

HUMAN RIGHTS

SUPPRESSION OF CANADIAN CIVIL LIBERTIES AT APEC SUMMIT

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, the Canadian Charter of Rights and Freedoms, part of the Canadian Constitution, contains certain fundamental freedoms which, over the years, custom and law have made universal in our country. Section 2 of the Charter provides that everyone has the freedom of peaceful assembly, that everyone has freedom of association.

Honourable senators, those fundamental freedoms, combined with the freedom of expression, fundamental liberties which Canadians value, constitute essential tools which free people use to gather together in order to have their voices heard. Whenever and wherever Canadians lawfully gather to oppose particular actions of government, they must not be placed at risk, nor suffer abuse at the hands of the police.

Honourable senators, the duty of Parliament is to act when incidents of human rights violations occur. In the past, we have witnessed incidents like the 1937 "padlock law," or the 1950 bylaws restricting the rights of Jehovah's Witnesses. Sadly, this past November, we witnessed the incident where students gathered to protest Indonesian President Suharto's presence at the APEC summit.

At issue for Parliament, honourable senators, is the determination of whether Canadian civil rights have been suppressed by the RCMP, and whether this suppression of rights was undertaken on orders from the Prime Minister's office. Parliament must act in defence of the civil liberties of Canadians. It is simply not acceptable that the rights and liberties of many Canadians were sacrificed to protect the feelings of a foreign dictator and known human rights violator.

Last November, the rights of Canadians were wrestled away from our citizens and delivered into the hands of an infamous human rights abuser. Parliament must act now, and the Senate ought to consider which of our committees will investigate the APEC events.

•(1500)

ROUTINE PROCEEDINGS

PRIVACY COMMISSIONER

ANNUAL REPORT TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table the report of the Privacy Commissioner for the period ended March 31, 1998.

ADJOURNMENT

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58.1(*h*), I move:

> That when the Senate adjourns today, it do stand adjourned until Wednesday, September 30, 1998, at 1:30 p.m.

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

Hon. Senators: Agreed.

Motion agreed to.

SECURITY AND INTELLIGENCE

SPECIAL COMMITTEE AUTHORIZED TO EXTEND DATE OF FINAL REPORT

Hon. William M. Kelly: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(*i*), I move:

> That notwithstanding the Order of the Senate adopted on March 26, 1998, the Special Committee of the Senate on Security and Intelligence which was authorised to hear evidence on and consider matters relating to the threat posed to Canada by terrorism and the counter-terrorism activities of the Government of Canada; examine and report on the current international threat environment with particular reference to terrorism as it relates to Canada; examine and report on the extent to which the recommendations of the Report of the Special Committee on Terrorism and Public Safety (June 1987) and the Report of the Special Committee on Terrorism and the Public Safety (June 1989) have been addressed by the Government of Canada; examine and make recommendations with respect to the threat assessment capacity of the Government of Canada relative to the threats of terrorism; and examine and make recommendations with respect to the leadership role, preparedness and review of those departments and agencies of the Government of Canada with counter-terrorism responsibilities; be empowered to present its final report no later than November 30, 1998; and

That the Committee be permitted, notwithstanding usual practices, to deposit its report with the Clerk of the Senate, if the Senate is not then sitting; and that the report be deemed to have been tabled in the Chamber.

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

Hon. Senators: Agreed.

Motion agreed to.

JUDGES ACT

NOTICE OF MOTION TO REFER CLAUSE OF BILL TO AMEND TO BANKING, TRADE AND COMMERCE COMMITTEE

Hon. Anne C. Cools: Honourable senators, pursuant to rule 58(1)(*f*), I give notice that I shall move:

That the Senators being in agreement on the salary increases for section 96 justices, and the Senators wishing to proceed forthwith to consider and pass into law that clause regarding this salary increase, being clause 5 of Bill C-37, *An Act to amend the Judges Act and to make consequential amendments to other acts*, that it be an instruction of this Senate to the Senate Standing Committee on Legal and Constitutional Affairs that the Committee divide Bill C-37 and deal separately and independently with clause 5, the salary increase, therein to advance without any delay the Senate's swift and smooth passage of this salary increase into law, while yet enabling the Senate Committee's continued thorough study of the remainder of Bill C-37.

ALBERTA

EXISTENCE OF POLITICAL STATE WITHIN CANADA— NOTICE OF INQUIRY

Hon. Douglas Roche: Honourable senators, I give notice that on Thursday next, October 1, 1998, I will call the attention of the Senate to the political state of Alberta within Canada.

QUESTION PERIOD

JUSTICE

INVESTIGATION INTO SALE OF AIRBUS AIRCRAFT TO AIR CANADA—STATUS OF LETTER TO SWISS AUTHORITIES— POSSIBILITY OF WITHDRAWAL OR NEGATION— GOVERNMENT POSITION

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, September 29 is the third anniversary of the dating of an infamous letter which was sent by the Minister of Justice and the Attorney General of Canada to the Minister of Justice of Switzerland accusing three Canadians, including former prime minister Mulroney, of engaging in criminal activity.

Can the Leader of the Government in the Senate tell me if the document is still valid and in the hands of the Swiss authorities or if it has been retracted.

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, as my honourable friend would know from previous discussions in this chamber, this matter is in the hands of the RCMP. Whether or not the letter was to be withdrawn would be pursuant to a recommendation of the RCMP. I am not aware that a recommendation has been made; however, I will certainly inquire, both on behalf of my honourable friend and myself.

Senator Lynch-Staunton: Honourable senators, the letter was not sent by the RCMP, it was sent on Department of Justice letterhead and was signed by Kimberly Prost, a senior lawyer in the department. Why would the RCMP be involved when we know that the letter was sent by the Department of Justice? Why would the Department of Justice itself not take the decision to withdraw or not withdraw the letter?

Senator Graham: Honourable senators, my honourable friend will know that in the agreement of understanding among the parties concerned, namely the government, the RCMP and former prime minister Mulroney, there was an implicit understanding that the investigation would be ongoing. It would be up to the RCMP to determine when and if that investigation would be terminated.

Senator Lynch-Staunton: Honourable senators, both the RCMP and the government apologized for the contents of the letter and paid heavy damages as a result of a scurrilous accusation, which have been proven to be totally unfounded. Why has the letter not been withdrawn? Let the investigation continue, but why are false allegations still in Swiss hands?

Senator Graham: Honourable senators, I will bring this question to the attention of my colleagues.

FINANCE

DISMISSAL OF INDEPENDENT ACTUARY STUDYING CANADA PENSION PLAN—REQUEST FOR UPDATE

Hon. Donald H. Oliver: Honourable senators, my question to the Leader of the Government in the Senate is a follow-up to my question of last week. The Minister of Finance recently confessed his awareness to the managerial conflicts existing between the Superintendent of Financial Institutions and the Chief Actuary for the Canada Pension Plan, Bernard Dussault. The government's failure to respond to the problems arising from these conflicts and failure to even acknowledge their existence at the first opportunity shows, among other things, a blatant disregard for the importance of this actuary's research.

As the Honourable Senator Graham stated last week, acting at arm's length from the government, this agency was to produce a vital report to all Canadians, and it would have been in the minister's best interests to ensure that nothing, especially office related differences, would stifle this progress.

Can the minister now tell us whether or not this action, on the part of the Superintendent of Financial Institutions is unmistakably an act of control and manipulation of information, in particular, information that might not have been favourable to the government?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, that question would be more properly directed to the Superintendent of Financial Institutions.

Senator Berntson: Does he not sit in this chamber?

Senator Graham: While he does not sit in this chamber, Senator Berntson, I wish to make honourable senators aware that the Superintendent of Financial Institutions will be available on Wednesday to discuss publicly the termination of employment of the CPP chief actuary. I am sure that, along with members of the press, members opposite who would like to question him at that time would be most welcome.

COMMENTS OF ACTUARY STUDYING
EMPLOYMENT INSURANCE FUND—GOVERNMENT POSITION

Hon. Donald H. Oliver: Honourable senators, as a supplementary and also as a follow-up to my question of last week, honourable senators know that the chief actuary of the Employment Insurance Fund, Michel Bédard, has sent e-mails to his colleagues about the EI surplus and his hopes that the Minister of Finance, Paul Martin, would decide against overriding the law in order to use the surplus for other priorities. His e-mail reads:

> I would hope that actuaries at large would not support the view that the UI surplus could be used to buy submarines, reduce personal income tax or improve health care, no more than the CPP fund.

Could these recent actions of the EI actuary qualify as managerial differences? Will we see Mr. Bédard looking for new work in the coming weeks?

Hon. B. Alasdair Graham (Leader of the Government): No, honourable senators. Mr. Bédard, of course, is entitled to his opinion. The chief actuary provides the commission with a financial analysis of the Employment Insurance account. His views are always most welcome.

AGRICULTURE

REPORT OF AUDITOR GENERAL ON EFFECT OF CASH ADVANCE
PROGRAM ON FARMERS—GOVERNMENT POSITION

Hon. Mira Spivak: Honourable senators, Chapter 11 of the Auditor General's report reviews the Cash Advance Program of the Department of Agriculture and Agri-Food. As honourable senators are aware, the Agricultural Marketing Programs Act was recently passed, updating the cash advance for farmers. In the legislative review leading up to the revamping of this program, the Auditor General expressed the concern that the department failed to fully disclose all the studies and internal evaluations with respect to the effectiveness of this program toward achieving its stated goals and objectives.

The department has yet to demonstrate whether the program has improved marketing opportunities and access to credit for farmers. As this is a matter of transparency and accountability before Parliament, as well as for affected stakeholders, could the Leader of the Government in the Senate inform us, if he knows, why these internal evaluations have not been put forward?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I am not aware why the evaluation has not been put forward. I will certainly attempt to secure an answer for the honourable senator.

By way of adding to my response, I would say that the government always welcomes the constructive views of the Auditor General.

Senator Spivak: The Auditor General also pointed out that the anecdotal evidence suggests that because of the way that the banks react to this program with their operating lines of credit to farmers, the Cash Advance Program might actually be doing little to achieve one of its stated goals, which is the increasing of credit available to producers. The department failed to respond specifically to this concern in the report. Could the good offices of the Leader of the Government in the Senate attempt to provide us with a more detailed response from his colleague to this concern raised by the Auditor General?

Senator Graham: As honourable senators know, the government has centralized collection activities by transferring responsibility for default collections from the Canadian Wheat Board to Agriculture and Agri-Food Canada. This should improve collection performance.

By way of commentary, the new Agricultural Marketing Programs Act has instituted several provisions to help prevent new defaults from taking place. These include, among other provisions, making defaulting producers pay all costs of collecting the default, and not allowing defaulting producers another advance. This is an effort not only to bring the books into order but also to ensure that the work is as transparent as possible.

Senator Spivak: Honourable senators, the plight of farmers in Canada, as well as in other places, is dire. Their incomes have not risen since the 1970s, and some have plummeted. I hope that all efforts will be taken to ensure that these defaults are lessened.

HEALTH

NEW BLOOD SUPPLY AGENCY—
CONFORMITY WITH RECOMMENDATIONS
OF KREVER INQUIRY—GOVERNMENT POSITION

Hon. A. Raynell Andreychuk: Honourable senators, the new Canadian blood supply agency has started its operations. I take this opportunity to encourage the government to finalize this situation, and pay all of those who need to be compensated, as Justice Krever indicated in his report.

What concerns me is that, in all of its press releases, the agency's spokesmen have indicated that they have not instituted Justice Krever's recommendations for the new agency. In fact, all of the press releases have pointed out that the blood agency will continue with business as usual as it was under the Red Cross, and that there would be no marked distinctions at this time. They have stated that they hope to get to the recommendations of the Krever inquiry at a later date.

Having haad the opportunity to study the Krever report for some considerable time, my questions to the Leader of the Government in the Senate are: Why are Canadians still faced with unanswered questions about the Canadian blood supply? Why have the Krever recommendations not been implemented? Has the government taken any steps to ensure that those recommendations are adopted so that the Canadian people will not suffer any further wrongdoing in the future because of the actions of this new agency?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, obviously the government is pleased that the new Canadian Blood Services Agency is now operational. We all wish the new management team and all employees of the new agency the very best during a very difficult transition period, as well as all the best in the coming months.

The Therapeutic Products Program of Health Canada has worked closely with the new operators to ensure that the transfer of the blood system will be accomplished in a manner that does not compromise the safety and the quality of blood and blood components.

Operational changes proposed by the new agency have been reviewed and approved by the Therapeutics Products Program. As well, inspections have been carried out across the country to ensure that blood centre staff are prepared for the transfer of operations.

Now that the new system is up and running, I hope the concerns that Senator Andreychuk has raised will be addressed in due course. We want to give the new agency adequate time to be operational. I am sure they will take into consideration everything that the honourable senator has said today.

Senator Andreychuk: Honourable senators, since the oversight responsibility still rests with the federal government, will the government give an undertaking that any harm that may befall citizens from this day forward will be the responsibility of the government, and that it will accept this responsibility? Certainly, enough time has passed for the implementation of this agency and the adoption of the recommendations that were made. There should be no risk left for the citizens at large. Will the government give that undertaking?

Senator Graham: Honourable senators, I am sure that those concerns will be taken into consideration in due course.

FINANCE

REPORT OF AUDITOR GENERAL ON NEW FINANCIAL INFORMATION STRATEGY—GOVERNMENT POSITION

Hon. Terry Stratton: Honourable senators, my question is addressed to the Leader of the Government in the Senate. According to the Auditor General, financial management information within the federal government continues to be significantly below acceptable standards in the private sector. The Auditor General is concerned that government does not have the sense to provide the cost information it needs to set user fees appropriately. He says that progress in replacing its archaic accounting systems has been slow, noting in his news release that, "Further delay is not an option any more." He says that implementing the new financial information strategy should be a priority.

Yet the Treasury Board responds that integrating the new financial information system will take a long period of time because "it requires not only an improvement in the available information, but also a changing culture."

Honourable senators, we are then told that bringing in a training framework will help meet this challenge.

Are we to believe that the major obstacle to an improved accounting framework — something which became government policy in the 1995 budget — is the government's inability to manage and control its officials?

Hon. B. Alasdair Graham (Leader of the Government): No, honourable senators, not at all. As I have said, the government welcomes the views of the Auditor General. On occasion, there are differences of views as to what accounting procedures should be followed. At the same time, however, we have taken into full account the reviews of the Auditor General today, and we will do so in the future.

•(1520)

Senator Lynch-Staunton: Only when you agree with him. Ask Paul Martin.

Senator Stratton: The concern is that it is taking a long time. I remind the leader that that was in 1995, and this is 1998.

The Auditor General also notes the need to move to accrual-based appropriations. The government's response is that the stakeholders, including Parliament, need to be consulted. Is the government considering any such consultations? If so, when will they be held? Can the government leader assure the Senate that both Houses of Parliament be part of those consultations?

Senator Graham: Honourable senators, those responsible carry out consultations on a continuing basis. If it is the desire of senators, individually or as a group, to bring these matters forward, we have the mechanisms available to us in the Senate to do just what Senator Stratton has suggested.

INDIAN AND NORTHERN AFFAIRS

REPORT OF AUDITOR GENERAL ON SETTLEMENT OF LAND CLAIMS—GOVERNMENT POSITION

Hon. Janis Johnson: Honourable senators, my question is with regard to the Auditor General's report as well.

Auditor General Denis Desautels cites the Department of Indian and Northern Affairs for its heel dragging with regard to the resolution of First Nations' land claims. He also found that DIAND had a very weak system for determining the amounts of cash and the value of land and other resources to be covered by final settlements in the implementation of these agreements.

On paragraph 14-7 of the report, the Auditor General states:

> The department plans to spend $262 million on comprehensive claims in 1998-99, although it does not clearly disclose in its Estimates to Parliament the amounts for negotiating them, for implementing them and for making payments under them.

Can Senator Graham tell this house whether the government can now table information indicating what financial projections the department has prepared regarding allocation of financial resources for land claims settlements?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, it should be understood that the Auditor General's report reviews treaties negotiated over a period of more than 20 years. Policies and practices have evolved considerably during and subsequent to that period. The Auditor General has recognized that negotiating treaties involves complex issues and that the length of time to negotiate them is a responsibility shared among all parties.

All honourable senators would agree that the federal government has greatly streamlined the negotiating process. The federal government has also improved practices to determine the assets — the land and the resources — to be included in final agreements.

We agree, Senator Johnson, that there is still room to improve and that treaties should be negotiated within a shorter span of time.

Senator Johnson: The Auditor General also stated that "claimants objected to a policy that they believed attempted to extinguish aboriginal rights in exchange for special benefits provided under a settlement agreement." Can the Honourable Leader of the Government confirm for us, as well as for the First Nations of Canada, that this government will not barter settlement agreements for the sacrifice of aboriginal self-identity? Will the honourable leader go on the record with that guarantee?

Senator Graham: I am sorry. Could you repeat the question?

Senator Lynch-Staunton: Just "yes" or "no."

Senator Johnson: We are talking about the Auditor General's further comments regarding claimants objecting to a policy that they believe attempted to extinguish aboriginal rights in exchange for special benefits provided under a special agreement. The concern on this side of the house, as well as the concern of the First Nations, is that the government will not barter settlement agreements for the sacrifice of aboriginal self-identity.

Senator Graham: Honourable senators, I am sure that this government would never do such a thing.

ANSWER TO ORDER PAPER QUESTION TABLED

HUMAN RESOURCES DEVELOPMENT— EMPLOYMENT INSURANCE FUND

Hon. Sharon Carstairs (Deputy Leader of the Government) tabled the answer to Question No. 121 on the Order Paper — by Senator Phillips

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ORDERS OF THE DAY

ROYAL ASSENT BILL

CONSIDERATION OF REPORT OF COMMITTEE— MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Bryden, for the adoption of the Twelfth Report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill S-15, respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament, with amendments) presented in the Senate on June 18, 1998,
>
> And on the motion in amendment of the Honourable Senator Grafstein, seconded by the Honourable Senator Pépin, that the Report be not now adopted, but that it be referred back to the Standing Senate Committee on Legal and Constitutional Affairs for further consideration.—(*Honourable Senator Murray, P.C.*).

Hon. Lowell Murray: Honourable senators, the adjournment motion on this debate has stood in my name since June 18, our last sitting day prior to the summer recess. I am informed that I spoke for three minutes that evening, so I have 12 minutes left.

Senator Lynch-Staunton's bill has not divided the Senate along partisan lines. There is, obviously, bipartisan support for this bill in this Senate, as there was in the committee. I think it is also fair to say that reservations about the bill are held on both sides of the chamber.

My own position is peculiar, indeed unique. As I acknowledged to the Senate when I spoke briefly in June, a bill virtually identical to that presented by Senator Lynch-Staunton was presented in my name some years ago when I was Leader of the Government in the Senate. The Liberal opposition, which was then in a majority in this place, put the bill into deep freeze. Their then leader, Senator MacEachen, would not support the bill, for reasons on which I speculated, I think accurately, when I spoke last June 18.

Upon reflection, I tended to share Senator MacEachen's perspective on the bill. When the Conservative government finally achieved a majority in this place, I did nothing to resurrect it.

As I say, reservations about the bill are held on both sides of the chamber, just as there is bipartisan support for it. The chairman of the committee herself, when she reported the bill last June, expressed some reservation about it. Senator Cools also has spoken in a similar vein. Senator Phillips has expressed some concerns, and Senator Grafstein now has an amendment — indeed, the amendment we are debating today — which would have the effect of referring the bill back to the Standing Senate Committee on Legal and Constitutional Affairs for further consideration. I support Senator Grafstein's amendment.

A reading of the transcript of the committee's sitting on June 18 reveals that several alternatives to this bill were proposed at the committee, some of them by members of the committee, others by a witness, Mr. John Aimers of the Monarchist League of Canada.

•(1530)

From a further reading of the transcript, these suggestions seemed to me to have elicited some interest on the part of members of the committee, but whether because of the pressures of the imminent adjournment for the summer recess or for some other reason, the committee chose not to deliberate on them. I quote from the transcript:

> **The Chairman:** There are some wonderful suggestions before us but the matter that is really before us is this bill. We must deal with it. In the absence of any further questions for our witness, we will proceed to clause-by-clause consideration of the bill.

Thus ended any discussion of alternatives.

One of the proposals would have the Governor General come here in person for the Royal Assent ceremony instead of acting through a deputy, as is now the case. The ceremony would be televised, and the Governor General would make a brief statement explaining the significance of Royal Assent in our parliamentary democracy. Another suggestion would relieve Supreme Court justices of the duty of acting as deputies to the Governor General, and instead would appoint eminent Canadians, such as members of the Order of Canada and retired senior military officers. Still another suggestion made by a member of the committee would have the Queen herself give Royal Assent by using teleconferencing technology. In all cases, the practice of assembling the two Houses of Parliament to this chamber for the Royal Assent ceremony would be continued.

Those are three options that were presented to the committee. I am sure there are others that might be considered. In my opinion, these and other alternatives should be given serious consideration before we move to shunt the Royal Assent ceremony off Parliament Hill and out to a private office at Rideau Hall. The bill before us would retain the ceremony in the chamber, assembling the two Houses of Parliament as an exceptional procedure.

I believe we should think twice before sending this bill to the House of Commons, where it is almost certain to be approved. Members of that House resent being summoned to be present at this chamber while the representative of the Crown pronounces assent to Parliament's legislation. I say with all due respect that I think their resentment springs from some misunderstanding, if not ignorance of the evolution of our parliamentary democracy.

We often lament the ignorance of young Canadians and not-so-young Canadians of our history and traditions. Professor Granatstein's book *Who Killed Canadian History?* published earlier this year, was an indictment of our provincial education systems and of the history departments at our universities. The role of the Crown in Parliament, central as it is to our system of parliamentary democracy, is not understood. At best, people believe it is symbolic, but symbolic of what? Most believe it to be a relic of a colonial past. This is not surprising. When was the last time we heard a public figure describe the concept and the functioning of the constitutional monarchy? For 25 years, our Governors General have been eloquent in speaking of Canadian values, and even of the virtues of Canadian federalism, but seldom if ever do they have a word to say about the role of the Crown, which they represent in our parliamentary democracy. This is to be regretted.

Let me say parenthetically that ignorance of some of the fundamentals of our parliamentary system encourages some to believe that we can transplant an American-style Senate on to Canada's much different federation and on to Canada's completely different parliamentary system. Among other things, it is a formula for paralysis of the federal government, which may be the real objective of some of those proposing it.

Honourable senators, nothing would be lost by returning this bill to the Standing Senate Committee on Legal and Constitutional Affairs, as has been suggested by Senator Grafstein. We may find we have an opportunity to breathe more life and meaning into the Royal Assent ceremony so that, for Canadians, it becomes a living and important symbol of our parliamentary democracy and of the freedoms that they enjoy.

On motion of Senator Cools, debate adjourned.

INCOME TAX ACT

INCREASE IN FOREIGN PROPERTY COMPONENT OF DEFERRED INCOME PLANS—MOTION PROPOSING AN AMENDMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Meighen, seconded by the Honourable Senator Kirby:

That the Senate urges the Government, in the February 1998 Budget, to propose an amendment to the *Income Tax Act* that would increase to 30%, by increments of 2% per year over a five-year period, the foreign property component of deferred income plans (pension plans, registered retirement savings plans and registered pension plans), as was done in the period between 1990 to 1995 when the foreign property limit of deferred income plans was increased from 10% to 20%, because:

(*a*) Canadians should be permitted to take advantage of potentially better investment returns in other markets, thereby increasing the value of their financial assets held for retirement, reducing the amount of income supplement that Canadians may need from government sources, and increasing government tax revenues from retirement income;

(*b*) Canadians should have more flexibility when investing their retirement savings, while reducing the risk of those investments through diversification;

(*c*) greater access to the world equity market would allow Canadians to participate in both higher growth economies and industry sectors;

(*d*) the current 20% limit has become artificial since both individuals with significant resources and pension plans with significant resources can by-pass the current limit through the use of, for example, strategic investment decisions and derivative products; and

(*e*) problems of liquidity for pension fund managers, who now find they must take substantial positions in a single company to meet the 80% Canadian holdings requirement, would be reduced.—(*Honourable Senator Carstairs*).

Hon. Michael Kirby: Honourable senators, I rise to support a motion which was introduced sometime ago by Senator Meighen, seconded by myself. The motion essentially asks the government to amend the Income Tax Act to increase from 20 per cent to 30 per cent the foreign property component of deferred income plans commonly known as RRSPs, pension plans, and other retirement savings vehicles. Under the terms of our motion, the increase from 20 per cent to 30 per cent would be achieved by increasing the ceiling by 2 per cent per year for five years.

Let me take a minute to give you a bit of background as to where the foreign property rule comes from in the first place. When RRSP legislation was first introduced back in the 1960s, the view of the government at the time was that retirement savings would be tax exempt in the sense that no tax would be paid on them until an individual took them out as income. Because these savings were to be tax exempt while they accumulated money, and because the government was foregoing revenue by not taxing those revenues when they were earned, it was felt that those revenues and savings ought to be kept in Canada for use by Canadians in Canadian investments. Therefore, a rule was introduced which originally said that 90 per cent of the investments had to remain in Canada and 10 per cent could be invested outside Canada.

Under the Conservative government, in the budget of the spring of 1990, the 10 per cent rule was raised to 20 per cent, so that 80 per cent had to remain in Canada and 20 per cent could be invested abroad. Just as Senator Meighen and I are proposing in our motion, the budget of the spring of 1990 made the increase in five 2 per cent increments. It went up 2 per cent per year over five years between 1990 and 1995, until ultimately the current 20 per cent level was reached.

•(1540)

A great many other organizations agree that the time has come to raise the 20 per cent limit. Several times in the past, the Banking Committee has supported raising this limit, based on representations we have received from a wide cross-section of groups.

We think that Canadians should be allowed flexibility in deciding where they want to invest their retirement income, particularly as government retreats from supplying the percentage of an individual's retirement income that it supplied in the past. In other words, as we put increasing reliance on individual Canadians to meet their own retirement income needs, it seems appropriate that we should also say to individuals, "You will have a greater responsibility for meeting your income needs in retirement and you will have maximum flexibility in allowing your resources to build so that you will have enough money for retirement." It seems wrong for the government to limit the degree of flexibility an individual can have by limiting investments outside of Canada to 20 per cent while, at the same time, as they are being asked to take greater responsibility for their retirement needs.

That is the underlying rationale for proposing that the Senate adopt this motion urging the government to extend the limit from 20 to 30 per cent.

Honourable senators, there are two other interesting elements. First, for sophisticated investors the 20 per cent has not become a ceiling at all. Let me explain. Sophisticated investors who understand how to use their investments cleverly, within the rules, can do the following: They can put 20 per cent of their investments into foreign investments; they can then put the other

80 per cent into a mutual fund, which itself is 80 per cent Canadian and 20 per cent foreign and, therefore, counts as a Canadian investment. Since 20 per cent of that mutual fund is invested outside the country and 80 per cent of the investors money is in that fund, that means that another 16 per cent is invested outside the country, with some understanding of the rules, that investor has thus invested 36 per cent outside the country, in spite of the current 20 per cent ceiling. For people who are at the upper end of the income scale, and who understand exactly how the mathematical formulas work, the 20 per cent rule is not an issue.

As has been pointed out to the Senate Banking Committee, the 20 per cent rule is also not an issue for the largest pension funds in the country. They have devised a system that was approved by the government several years ago, so it is not a recent phenomenon. Large pension funds get around the 20 per cent rule by continuing to hold assets that are invested in Canada by undergoing a fairly clever income swap with a pension fund in another country so that the money is invested in Canada but all the benefits accrue outside Canada. In turn, the income from those foreign investments accrue to the fund in Canada. This practice is clearly within the letter of the law. One such body that testified before us took us through a detailed example. This income swap system allows the large pension funds to get around the 20 per cent rule.

We have a rule that large pension funds and very wealthy, sophisticated individual investors can get around but individual Canadians cannot because they do not know how to do it and they do not have the money available to do it. In the sense of fairness and equity with respect to taxation, it is wrong to have in place a policy which can clearly be circumvented by the elite of this country or by large institutions but which individual, ordinary Canadians, who are saving through their RRSPs in an attempt to prepare for their retirement, must avoid because it is too complicated to do so.

I emphasize, honourable senators, that support for this change is not merely bi-partisan within the Banking Committee, but among a lot of the groups from which we have heard. We heard from investment dealers, on the one hand, and from some consumer groups, on the other, that this change should be made and it should be made sooner rather than later.

Honourable senators, a study done last year by Ernst and Young, which was released in October 1997, showed that over the last 25 years, had a 30 per cent rule been in effect, as Senator Meighen and I propose, it would have allowed Canadian investors to earn, on average, 1.6 per cent more per year on their retirement savings. While 1.6 per cent does not sound like much money, if you look at it compounded over a 20- to 30-year period, which is typically the investment period of an RRSP; and look at it on the basis of the average size of an RRSP in Canada, it amounts to over $30,000. Although the 1.6 per cent on an annual basis sounds small, its compounding effect over a prolonged period of time is significant.

A study by a prominent consultant to the pension industry, which was given to the Banking Committee, showed that over the last decade — that is, from 1985 to 1995 — the foreign property rule resulted in foregone revenues of some $20 billion to Canadian pension funds. In turn, when that money eventually takes the form of income for individual pension fund members, it would have resulted in a significant increase in revenue for the Government of Canada.

Honourable senators, we have two basic reasons for urging that the Senate adopt this motion and make this recommendation to the Government of Canada — a recommendation which has been contained in three different reports of the Banking Committee over the last decade, when it was chaired by me and by my conservative predecessors. Both parties and all members of the committee have supported this measure for some time. First, as we put increased reliance on Canadians to support themselves in retirement, we have an obligation to allow them to maximize their revenue and to give them the maximum amount of diversification possible in order to implement their own retirement income investments. Second, the issue of fairness is of concern to us. We have now a rule that is being circumvented by the largest pools of pension money in the country and by large, individual investors who understand how to use the rules. In the interests of fairness and equity in tax policy, we would argue that that inequity should be removed and that, therefore, the rule should be changed from 20 per cent to 30 per cent.

Finally, honourable senators, to the best of our knowledge, Canada is the only country that has such a foreign investment limitation in its retirement savings legislation. In other countries which do not have it — and, for those who worry that Canadians will take 100 per cent of their income outside the country — there seems to be a kind of natural limit. For example, in countries like the U.K., the average amount of foreign investment in their equivalent of an RRSP is at about the 30 per cent mark. Most people are neither willing to gamble nor willing to be sufficiently speculative that they put a huge percentage of their savings outside the country. Our guess would be that if we went from 20 per cent to 30 per cent, you could actually remove the limit entirely and you would still end up around 30 per cent. That appears to be the natural limit for investors in other countries.

•(1550)

Honourable senators, before this particular motion is allowed to die on the Order Paper, I hope that in the next few weeks we will vote on it, in time to send the resolution to the Minister of Finance as he contemplates the changes that he will make in his budget next year.

Hon. Lowell Murray: Honourable senators, I should like to ask Senator Kirby a few questions. I preface my remarks by saying that for many years, I supported the classic arguments that have been put forward by my honourable friend on this matter. Indeed, I said as much to our friend Senator Meighen a while back. However, as I get older and more apprehensive about the future of the country in this age of globalization and technology, I am beginning to have second thoughts.

Will the honourable senator state, as I know he can, whether the justification for the present limits are in the realm of finance and economics, or are they social and political in the broad sense?

Senator Kirby: Honourable senators, the justification contains a bit of both. Let me go back to the original limit. The decision to go from 10 per cent to 20 per cent was taken because people were complaining that 10 per cent was too tight a limit.

The rationale for the original 10 per cent rule was that RRSPs would be considered earned income on which no tax would be paid until such time as the money was taken out. Therefore, in a sense, the portion that would normally have been paid in income tax would be allowed to increase in value through investments. Essentially that was revenue that the federal government was delaying, not foregoing, because once money is taken out of the RRSP it is taxed. Typically, though, it is taxed at a lower marginal rate because a person in retirement is earning less income.

In a sense, that increase in the value of the investments which would accrue while the RRSP was tax-sheltered was a clear benefit to Canadian taxpayers. There is no question about that. That is one of the most popular features of RRSPs.

The argument was that since this was money that was being foregone by the federal government, as a public policy position, the majority of that money — 90 per cent originally, 80 per cent today — should be invested in Canadian investments. If there is to be no tax on that income to the government, then the government ought to able to require at least that it be invested in Canada.

That has been the position of governments in Canada continuously from the mid-1960s, when RRSPs began, through to today. The only thing that happened was that part way through the process, in 1990, the limit was changed because there was pressure that the limit was becoming too constrained. The philosophy has been that if you give taxpayers a break, it is not unreasonable to require that that break ought to be reinvested in the country.

We are saying that as one moves to globalization and to making individuals truly responsible for their own future and retirement, then one should not constrain what they do. That is one thing.

Second, the reality is that elite individuals and large pools of capital have found a way around the rules. So the rule is only applying to ordinary Canadians and that is by definition, in our view, blatantly unfair.

The Hon. the Speaker: Honourable senators, I must point out that the time period for speech and questions has expired. Is leave granted to continue?

Hon. Senators: Agreed.

Senator Murray: Perhaps my friend could indicate why he would go to 30 per cent. What is the rationale for that figure, rather than 40 per cent or no limit at all?

Senator Kirby: Senator Murray, that is a very good question. Frankly, Senator Meighen and I would prefer that the limit simply be removed entirely. We think that if it were removed, ultimately the national average would wind up at about 30 per cent anyway.

If you look at other countries that have no limit at all and if you look at the percentage of retirement income savings that are invested outside their respective countries, it is in the low 30s. It is somewhere between 30 and 32 per cent in almost every country.

The reason is that most individuals who invest their money outside the country are willing to gamble a little bit but experience elsewhere has shown they are not willing to gamble a lot, because of the problems of currency risk and so on. In most countries with no ceiling, individual investors, making their own decisions, have stabilized at about 30 per cent.

Our view is pragmatic, but our preferred option would be no ceiling at all. If you put in a 30 per cent ceiling, it is basically not a constraint anyway because very few people would go beyond it. There was a history in 1990 of moving from 10 to 20 per cent in organized increments of 2 per cent per year.

Senator Meighen and I concluded that it might be easier to persuade the Department of Finance to move from 20 per cent to 30 per cent based on precedent — knowing how the Department of Finance loves precedents — rather than moving to our preferred solution which would be no cap. We also recognize that 30 per cent is virtually no cap in a practical sense.

Senator Murray: Honourable senators, I accept what the honourable senator says about the arguments on the basis of logic and even equity insofar as individual investors are concerned. However, has he considered the problem and the danger in respect of those large Canadian institutions and a policy which effectively would reduce their stake in the future and the success of Canada?

Senator Kirby: Senator Murray, let me make sure I understand your question. If you move from 20 per cent to 30 per cent, then the large investment pools in the country will move from 20 to 30 per cent and therefore they will have less of a stake in Canada.

I made the point in my remarks that that has happened. The big pools of capital have done it already. They have done it quite cleverly through an income swap scheme that is technically within the letter of the law and has been approved by finance, but its effect is as if the ceiling was not there.

That is a legitimate concern except that it has already happened. Again, they have stabilized in the low 30s by their own policy decisions.

Hon. Consiglio Di Nino: Honourable senators, first, I should state that I spoke in favour of the motion with some reservations. It is those reservations that I would like to put on the record.

Picking up on Senator Murray's comments, we are suggesting now that if the recommendation to the minister is accepted, we will increase the maximum foreign content in sheltered plans from 20 to 30 per cent. We would then give the opportunity to these mutual funds to go from 30 per cent to a higher volume. That opportunity goes as well for the "smart investors," as the honourable senator calls them, although this is such a common tool that everyone is aware of it now.

Or is the honourable senator suggesting that there would be some additional recommendation to the minister to limit it to a maximum of 30 and, in effect, do away with the loopholes or the additional opportunities for increase now from 20-plus and in the proposed scenario from 30-plus?

Senator Kirby: Frankly, we had not thought about that, although eliminating the loopholes, it turns out, is extremely difficult. It has to do with the technical way in which the funds are invested because, in fact, it is not a loophole; they are actually within the law.

From a practical standpoint now, rather than a theoretical standpoint, if you move from 20 per cent to 30 per cent, the use of the loopholes will, in effect, disappear because even with the loopholes, people are voluntarily hanging at around 30 per cent.

If you go to 30 per cent, I do not think you need to go to some effort to close the loopholes. Some people may go to 31 per cent but, effectively, people are not going way beyond that in any event. At least that is a practical market investment decision by the big pools of capital.

Senator Di Nino: I am not sure I agree with the honourable senator there but it would be an interesting venture.

Senator Kirby: Honourable senators, let me be clear. There are certainly some exceptions, but they are small and isolated. The bulk of the big players who testified before us on this issue testified — and I look to Senator Meighen to correct me if I am wrong — that they are very close to 30 per cent. They might be at 31 per cent and a bit but they have not gone to 40 or 50 per cent. They are much more inclined to stay in the 28 per cent to 32 per cent range by their own internal policies.

•(1600)

Senator Di Nino: You may be right. My suggestion is that if we do make this recommendation and the minister agrees with it and puts it into regulation or law, whichever is appropriate, that we keep an eye on that situation to ensure that we know how far down this path we are going.

When I spoke on this issue in support of the 30 per cent, I did so because I believe it is appropriate to give Canadians an opportunity to diversify their portfolios and, due to the limited markets available in this country, the only way they can diversify well is to open it up to the global markets.

However, I also caution on the personal view of Senator Meighen and yourself, Senator Kirby, which is to eliminate the ceiling completely. I am greatly concerned about that. I think that what has happened to this country in the last few months, and in particular what has happened to the Canadian dollar in the last little while, legitimizes my argument that we should be careful not to creep up to the elimination of the ceiling. I, too, am concerned that, since we are using sheltered money, since we are using, in effect, money belonging to the taxpayers of this country, we do not necessarily want to see too much of that go into creating jobs in Japan, Germany and China. We should still be looking for some benefit to Canadians because it is, to some degree, their tax dollars that we are using for this purpose.

Do you believe that if the 30 per cent rule were available today, it would have created an even bigger problem for the Canadian dollar and the Canadian economy than occurred in the last three months or so?

Senator Kirby: You are straying into a realm of economic forecasting that I am not sure I can handle. I will go back to your first comment, which essentially was a concern that there ought to be some limit, and that is in part why we proposed 30 per cent. You were concerned — justifiably, I think — about it having a dramatic impact on Canadian investment policy, and therefore you said it should be closely monitored.

That is one of the big advantage of moving the rule by 2 per cent a year over a five-year period. If you monitor it at the end of the second year and find out that it is having disruptive effects, you can cancel the last three increments.

I share your view, and I know that Senator Meighen does as well, that a single, one-stage, dramatic step could have some of the disruptive results about which you are concerned and that, therefore, one ought to do it incrementally, and monitor it and be prepared to cancel subsequent increments if it is seen to be causing some of the negative results that you suggested could occur. I would be the first to admit that that is a possibility, although I think it is a very remote one.

Hon. Mira Spivak: Honourable senators, if the 20 per cent rule or the 30 per cent rule does not matter to the big institutions, and it does not matter because they are out of here already, why are they asking for the change? If it is a question of equity, why not address the issue of the big institutions that are not supporting the Canadian economy? We have many instances of this — CEOs who run Canadian companies live in the United States; a family that owns a whole province goes offshore, et cetera.

Why are we going in the direction, in terms of equity, of looking at how we can even it up the other way? Surely it is important to maintain that rule which allows us to support the economy in Canada. This rule is only for RRSPs. Diversification can occur outside of RRSP investments.

Further, is it your assumption that globalization is an unmitigated good? That is being questioned lately.

Senator Kirby: I do not think I commented on whether globalization is good or bad. I indicated that it is a reality.

In any event, let me correct a couple of misapprehensions. First, the big institutions are not asking for the change because they do not need the change. The senator asks why we are doing something for which the big institutions asked. We are not doing something for which the big institutions asked because it is not a problem for them.

Senator Spivak: Investment dealers asked for it.

Senator Kirby: Yes, the investment dealers have asked for it and some consumer groups have asked for it. The fact is that a number of groups have asked for it because they would like the flexibility.

You asked why, if people want diversification, they do not do it outside their RRSPs. The reality is that it is only the Canadian elite who have investments outside of their home and their RRSPs. The reality is that there is not a sizeable number of Canadians who are investing for their retirement outside of a home, a pension plan or an RRSP. Frankly, they simply do not earn enough money to do that.

Our concern was to ensure that the average Canadian has the same benefits as other people have, by using the tax rules. We are simply trying to ensure that they have the same break even though they do not have the extra resources to which you referred, which allows them to use a different model.

Senator Spivak: The other side of the equity question is that it is unfair to those large institutions to avoid having a stake in Canada through all these means. Why not address that issue?

Senator Kirby: Let us be clear: It would be very unfair to say that the largest pension funds in the country do not have a stake in Canada. Pension funds holding $10 billion, $12 billion, $14 billion or $20 billion, and which hold 70 per cent of their investments in Canada, have a huge stake in Canada. A problem which will be substantially compounded as the CPP investment fund builds up will be the number of dollars that are chasing a relatively limited number of stocks. Under the investment rules, companies must meet certain criteria in order to permit pension funds to invest in them.

One of the concerns of the committee, when looking at the growth of the CPP fund, was what would happen once we have another $100 billion chasing the same limited number of stocks. I did not use this argument earlier, but that alone would indicate that we ought to have diversification or we will have quite a skewed market-place, because a huge amount of money will have to be invested in a relatively limited number of stocks. Once the CPP fund builds up, I think that pressure alone would force public change.

The CPP forecast numbers show that it will be four or five years before it gets up to $100 billion, but the reality is that, in the meantime, we ought to make the change for ordinary Canadians.

[*Translation*]

Hon. Fernand Robichaud: I have a simple question for my honourable colleague. Could he give me a dollar figure for the percentage of 10 per cent we are talking about, in other words, the 20 to 30 per cent that will no longer be available on the Canadian market and will move to a foreign market?

[*English*]

Senator Kirby: Honourable senators, I do not have that. I guess we have seen data along that line, but in order to calculate that number you would need to look at the amount of money being invested in a typical year in either pension funds or RRSPs, delete the large pension funds because they are already operating at around 30 per cent, delete the very upper income level of Canadians, and then deal with the remainder. However, in all the hearings on financial institutions of all kinds — banks, trust companies, insurance companies, credit unions, et cetera — which the Banking Committee has held over the last decade, shortage of capital has not been an issue. Witnesses do not appear before us and say that capital for investment purposes is not available. This is different from loans. You can get into lots of arguments about debt money, but we have not heard that Canadian firms are in some sense suffering a substantial shortage of capital.

I do not have data on this, but my personal view is that that is unlikely to become an issue simply because of the situation.

Honourable senators, I notice that Senator Meighen is looking quite anxious to make a comment on that point. I am quite happy to yield the floor to him, if that is permitted in the rules.

Hon. Michael A. Meighen: Honourable senators —

The Hon. the Speaker: Honourable senators, Senator Meighen moved this motion. Therefore, if he speaks now, his speech will have the effect of closing the debate.

On motion of Senator Carstairs, debate adjourned.

•(1610)

NATIONAL DEFENCE

MOTION TO ESTABLISH SPECIAL COMMITTEE TO EXAMINE ACTIVITIES OF CANADIAN AIRBORNE REGIMENT IN SOMALIA—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Berntson:

That a Special Committee of the Senate be appointed to examine and report on the manner in which the chain of command of the Canadian Forces both in-theatre and at National Defence Headquarters, responded to the operational, disciplinary, decision-making and administrative problems encountered during the Somalia deployment to the extent that these matters have not been examined by the Commission of Inquiry into the Deployment of Canadian Forces to Somalia;

That the Committee in examining these issues may call witnesses from whom it believes it may obtain evidence relevant to these matters including but not limited to:

1. former Ministers of National Defence;

2. the then Deputy Minister of National Defence;

3. the then Acting Chief of Staff of the Minister of National Defence;

4. the then special advisor to the Minister of National Defence (M. Campbell);

5. the then special advisor to the Minister of National Defence (J. Dixon);

6. the persons occupying the position of Judge Advocate General during the relevant period;

7. the then Deputy Judge Advocate General (litigation); and

8. the then Chief of Defence Staff and Deputy Chief of Defence Staff.

That seven Senators, nominated by the Committee of Selection act as members of the Special Committee, and that three members constitute a quorum;

That the Committee have power to send for persons, papers and records, to examine witnesses under oath, to report from time to time and to print such papers and evidence from day to day as may be ordered by the Committee;

That the Committee have power to authorize television and radio broadcasting, as it deems appropriate, of any or all of its proceedings;

That the Committee have the power to engage the services of such counsel and other professional, technical, clerical and other personnel as may be necessary for the purposes of its examination;

That the political parties represented on the Special Committee be granted allocations for expert assistance with the work of the Committee;

That it be empowered to adjourn from place to place within and outside Canada;

That the Committee have the power to sit during sittings and adjournments of the Senate;

That the Committee submit its report not later than one year from the date of it being constituted, provided that if the Senate is not sitting, the report will be deemed submitted on the day such report is deposited with the Clerk of the Senate; and

That the Special Committee include in its report, its findings and recommendations regarding the structure, functioning and operational effectiveness of National Defence Headquarters, the relationship between the military and civilian components of NDHQ, and the relationship among the Deputy Minister of Defence, the Chief of Defence Staff and the Minister of National Defence,

And on the motion in amendment of the Honourable Senator Forrestall, seconded by the Honourable Senator Beaudoin, that the motion be amended by adding in paragraph 2 the following:

"9. the present Minister of National Defence.". — (*Honourable Senator DeWare)*.

Hon. A. Raynell Andreychuk: Honourable senators, I rise to support the motion to appoint a special Senate committee to examine the remaining matters that have not been examined by the commission of inquiry into the deployment of Canadian Forces to Somalia, as introduced by Honourable Senator Lynch-Staunton. I do not propose to go into the details, merits or shortcomings of the commission of inquiry into the deployment of Canadian Forces to Somalia as other senators have already addressed these important issues.

I believe that the Senate should conduct an inquiry for these following additional reasons: First, as Canada holds itself out as a democracy, it is extremely important that we not be careless with our democratic process, our governance, our respect for the rule of law, and that it not be taken lightly. As it has been said about the United States, and I paraphrase here, democracy can be lost through neglect and a chipping away at it through small, innocuous measures.

The separation of powers must not be taken lightly. The executive arm of the government should not interfere or influence unduly the judicial arm, no matter how meritorious a case the government of the day thinks it has. It surely should not take polls, commentaries and the like to supplant their duty to respect the rule of law in Canada.

In this case, the government had the discretion to handle the Somalia situation in any way it saw fit. For example, it could have restricted itself to an internal inquiry, an executive inquiry, or an internal departmental or military inquiry. It could also have embarked on a legislative inquiry or a whole host of other mechanisms. Instead, of its own volition, it created a quasi-judicial tribunal at arm's length with terms of reference. By doing so, it set up an entity that demands non-interference by the government.

In fact, it did not do so. As has been pointed out, the executive, namely the Government of Canada, took to the slippery slope of disrespect for the rules and began the following: First, civil and military personnel did not exactly leap to assist the commission of inquiry. As has been pointed out, the commission spent most of its time strategizing as to how they might get compliance with their request for information and documentation. Second, the government, mainly through Minister Young, became openly critical of the commission of inquiry. I submit that the government had a responsibility to support the commission of inquiry that it created. Third, the tribunal was cut short; in my opinion, a direct interference. If the government, and perhaps some of the public, were forming the opinion that the commission of inquiry was taking too long, that was no reason to tamper with the independence of the commission of inquiry. The government had a higher obligation to allow the commission of inquiry its discretion and to respect its mandate.

If the commission of inquiry was taking too long, the fault lay not with the commission but with the government. It did not spell out time limits appropriately with respect to the commission. It did not change the perception nor, indeed, consider the realities of long and extended inquiries by previous commissions. One need point only to the Krever inquiry, the Royal Commission on Aboriginal Peoples and the Royal Commission investigating the RCMP. All were given time limits, all were given latitude and discretion and extended time limits. Why would the commissioners in this inquiry think they should or would be treated differently?

This commission of inquiry and others were misled. If the government intended to restrict the commission in time, it should have done so at the start. Perhaps commissioners would have been predisposed to take a different approach to the inquiry or perhaps they would not have accepted to serve. They were rightly acting on previous traditions and practices for inquiries.

Another reason why I believe the inquiry in the Senate should be instigated is that the reputations of the commissioners and of many of those who were named or dealt with the inquiry, have been damaged. As anyone knows who has worked in or near the courts, one cannot judge until all the evidence is in. With the curtailment of the commission of inquiry, the commission was forced to make decisions that can be easily assailed as incomplete.

Even the behaviour of commissioners, particularly the head of the inquiry, is being questioned on incomplete evidence. Had all the evidence and a full conduct of inquiry been allowed, the results might have been dramatically different for all the players in the Somalia incident, including those on the commission of inquiry itself. Careers are being curtailed while others are being promoted, both civilians and military, and the search for the truth has not been concluded.

My final reason for believing that the inquiry should proceed in the Senate is as follows: We put great importance on our international reputation and influence and I believe that it has been damaged by this incomplete process. We have often made value judgments, and continue to do so, on how democratic other governments are in various situations. We also make value judgments on how respectful other governments are of the rule of law. We have now given them a precedent of government interference which harms our credibility internationally and provides to notorious regimes the rebuttal that they are only doing what Canada does. One can argue that by comparison the respect for the rule of law is intact in Canada, but this is no comfort to most Canadians who thought that our goal was to avoid entirely comparison with these notorious regimes.

In summary, the greatest tragedy to Canada is the treatment of our military. There is no greater sacrifice than a person's willingness to fight and stand in harm's way for the principles and freedoms of one's country. With this unfinished inquiry, we risk besmudging and damaging the reputations of good soldiers and letting those deserving of accountability go unpunished. A just, fair and democratic end should have been a full and fair inquiry. This was not to be.

Therefore, honourable senators, the Senate inquiry is a necessary alternative.

On motion of Senator Kinsella, debate adjourned.

[*Translation*]

COMPARATIVE LAW

CONFERENCE IN BRISTOL, ENGLAND—INQUIRY DEBATED

Hon. Gérald-A. Beaudoin rose pursuant to notice of Tuesday, September 22, 1998:

> That he will call the attention of the Senate to his participation at the XVth International Congress of Comparative Law, held during the last week of July 1998, in Bristol, England, a participation related to the subject of constitutionalism in Canada.

Honourable senators, the XVth International Congress of the International Academy of Comparative Law was held from July 26 to August 1, 1998 in Bristol, England.

This academy brings legal scholars from the world over together every four years to discuss legal issues in various sectors of law, including constitutional law, rights and freedoms and parliamentary law. Several hundred legal scholars from five continents took part in the Bristol congress.

I presented two papers as Canada's representative. The first concerned the constitutionalization of the judicial system in Canada and the second, the role of Parliament as evaluator in Canada.

His Royal Highness, Prince Philip, followed our activities on Saturday, August 1, and I had the great honour of speaking in his presence and summarizing in a few minutes a 30-page text on constitutionalism in Canada.

The text will be published by Éditions Blais in Montreal this fall in the report on the XVth International Congress of Comparative Law in Bristol.

Constitutionalism in Canada exists in various areas including federalism, parliamentarism, the protection of rights and freedoms, minority rights and the rule of law.

There has been much discussion of constitutional law in Canada, ever since 1867, when Canada became a federation, as well as since 1982, when the Charter of Rights and Freedoms was added to the Canadian Constitution. For more than a century, Canadian courts of justice have exercised control over the constitutionality of both federal and provincial legislation. Acts and sections of acts have been declared unconstitutional, on the grounds that they did not respect the division of legislative jurisdictions or the Charter of Rights and Freedoms. There have been hundreds of Supreme Court decisions relating to the Constitution since 1867.

Section 52 of the 1982 Constitution Act states:

> The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

The Canadian Constitution, like that of the United States, is supreme over all other laws of our country, as well as in our courts. It is the law of laws. It is the backbone of the political and constitutional system. Canadian constitutionalism existed prior to 1982, but section 52 of the Constitution Act, 1982 constitutes its ultimate basis.

Our parliamentary system takes its inspiration from that of the United Kingdom. The federal Parliament and the provincial legislatures in Canada have supremacy only in the legislative sphere delineated by the Constitution of 1867 and its amendments. The Supreme Court has always played the role of guardian of the Constitution. A number of sections of the Canadian Constitution of 1867 expressly set out how parliamentarism operates in Canada.

In 1982, a constitutional charter of rights was entrenched in the Constitution. In the space of only a few years, the Supreme Court brought down 350 judgments relating to that charter, which is binding on both Canada's legislative and executive components. The work done by this court is remarkable.

Former chief justice of the Supreme Court Brian Dickson stated, correctly so in our opinion, that the 1982 Charter was the most significant event that had taken place in Canada since federalism was established in 1867.

Canada is, along with the United States and Germany, among the countries that have reached the ultimate stage of complete and unquestionable enshrinement of the legal order in a constitution.

I applaud this evolution of the Constitution. In our country, however, there are lawyers who occasionally raise the issue of "government by judges" or "jurocracy." Where does the legislative power begin and the judicial power end? Does the judiciary encroach on the powers of Parliament and legislatures in Canada? In a country such as ours, which is both a parliamentary democracy and a lively federation, we cannot not ask ourselves the question. The debate goes on, but we know full well that the enshrinement in the Constitution did take place in 1867 and again in 1982. I think the system is working well.

The legislative and judiciary powers have been independent from one another in Canada as well as in the United Kingdom since the Act of Settlement of 1701.

In a recent decision, the Supreme Court of Canada clearly ruled that Parliament ought to fully exercise its powers. It does not always do so, especially when cases are difficult, preferring to defer to the judiciary. I think Parliament should take all its responsibilities under the Constitution. Debates can be difficult at times. We need only think of debates on issues such as euthanasia or abortion. Parliament and the court make law in their own way, but a different way, as former Chief Justice Brian Dickson said.

Our Supreme Court is our de facto constitutional court, so to speak. A balance was struck in Canada between the legislative, executive and judiciary powers. All in all, there is a good *modus vivendi* in place between these three powers. The enshrinement of legal order in the Constitution has indeed made headway since 1982; we are on the right track.

The second paper I presented in Bristol dealt with parliamentarism in Canada.

We all know that we have a bicameral system at the federal level and a unicameral one in each of the ten provinces.

The right to vote is protected by section 3 of the Canadian Charter of Rights and Freedoms. The duration of legislatures is provided for in sections 4 and 5 of the Charter.

In our political and constitutional system, the judicial branch is distinctly separate and independent from the legislative and executive branches. The latter two branches, however, are not clearly separate one from the other; they coexist, if I may put it that way, in the sense that, if the government forms a majority, it controls both the legislative and executive branches. That having been said, the government answers to the chamber of deputies and, if it loses the confidence of this chamber, must call an

election or resign from office. If it is a minority government, its situation may become difficult. We had a minority government at the federal level seven times, in 1926, 1957, 1962, 1963, 1965, 1972 and 1979. In 1921, the government of Mackenzie King did not have the majority of seats in the House of Commons, but the Prime Minister forged an alliance with a certain political party of the time, making it, to all intents and purposes, a majority government. The vote of confidence is not spelled out in the Constitution; this is a key and very well-established constitutional convention, which has been part of the Constitution of Canada for over one and a half centuries, as the Supreme Court mentioned in the 1981 reference on patriation.

Parliamentary government has existed in Canada for over two centuries and has undergone a remarkable evolution. Responsible government pre-dates Confederation; the government can remain in power only as long as it has the confidence of the people's elected representatives. Cabinet has taken on greater importance over the years. Cabinet's leader, the "Prime Minister," who started out as a "*primus inter pares*" has become an elected sovereign, as Maurice Duverger put it.

Control over the constitutionality of legislation, which is rigorous in Canada, may be exercised after the fact, when a piece of legislation is challenged, or before, as provided for in the Supreme Court Act; the federal government may ask the Supreme Court for an opinion on the constitutionality of a bill. It has done so on several occasions. The provinces may do likewise, and seek the opinion of their respective courts of appeal, with the possibility of appealing to the Supreme Court of Canada. There have been some 75 references to the federal level, and 120 references in all.

These references may be of the greatest importance. Consider, for example, the September 28, 1981 reference on patriation of the Constitution, and the August 20, 1998 reference on Quebec's secession. These advisory opinions do not have the same force in law as a ruling; in practice, however, they carry the same weight.

Under section 99 of the Constitution Act, 1867, the judges of the superior courts shall hold office during good behaviour, but shall be removable by the Governor General on address of the Senate and House of Commons. No judge has been so removed since Confederation. This is a form of impeachment, which comes to us from the United Kingdom and which is enshrined in section 99 of the Constitution Act, 1867.

The Senate and the House of Commons of Canada have the same powers, with three exceptions: A bill involving expenditure of public funds must originate in the House of Commons; a vote of confidence or non-confidence can only take place in the House of Commons, since the government is not responsible in the Senate; finally, with respect to constitutional amendment, the Senate has only a six-month suspensive veto. In all other regards, the Senate and the House of Commons have the same powers.

Although the Senate rarely uses its veto, it often proposes amendments; as we all know, the House of Commons may accept or reject these. If the House of Commons opposes an amendment, the two chambers must work back and forth to reach a compromise. Both chambers have the right of veto. In 1989, for example, the Senate rejected the bill on abortion passed by the House of Commons. The Senate's suspensive veto with respect to constitutional amendments was applied in 1996 in the case of the constitutional amendment for denominational schools in Newfoundland.

The second function of our Parliament and the provincial legislatures is to exercise control over the government and the administration. This function is becoming increasingly important in today's world. More and more experts are appearing before our parliamentary committees, and our legislation is closely scrutinized in that forum.

That, then, is a brief summary of the two reports I presented at the Bristol conference.

The Hon. the Speaker: Honourable senators, if no other senator wishes to speak, this item on the Order Paper is deemed to have been debated.

The Senate adjourned until Wednesday, September 30, 1998, at 1:30 p.m.

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