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Wednesday, June 16, 1999

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Wednesday, June 16, 1999

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

Prayers.

SENATORS' STATEMENTS

THE LATE BERNIE FALONEY

Hon. Francis William Mahovlich: Honourable senators, Bernie Faloney was an exception. He could not pass, he could not run, he could not kick. He played in nine Grey Cup games, winning in four, and this was accomplished with bowed legs.

Bernie Faloney played in many famous games, including for Edmonton in the 1954 Grey Cup. From 1955 to 1956 he served in the U.S. Air Force. In 1957 he was with the Hamilton Tiger Cats. He did not have the bullet-like passes of Sam "the Rifle" Etcheverry, but they somehow hit their targets. He did not have the power of Lou "the Toe" Grozza, the famous Cleveland punter, but his average was as good as any punt specialist.

One of the greatest moments in sports came in 1961; a sudden death game in Hamilton against the Toronto Argonauts. The score was 25-25. The Argo's star kicker, Dave Mann, was going for the winning single point. The Tiger Cats placed Bernie Faloney in the end zone to kick the ball back. What happened next has been called the greatest moment in sport. Mann's kick only went 10 yards into the end zone. Faloney kicked the ball back. The Argo kicker recovered the ball and sent it flying towards the Tiger Cat end zone. Mr. Faloney snared the pigskin just to the right of the post. Then he started down the field, side-stepping the huge Argo linemen, and sometimes he had to step by the same defensive person twice. Because of his bowed legs and speed, he could be caught again once missed.

The run seemed to take an eternity — the length of the field for the apparent winning touchdown. However, the run was called back, owing to a penalty, and the game went into overtime. Before 27,000 fans, the game was so tense that a spectator had a seizure and another died watching the game on TV. The Tiger Cats won, but lost to Winnipeg in the Grey Cup, and Mr. Faloney won the Schenley Award as the league's most valuable player.

Bernie Faloney was born in Carnegie, Pennsylvania, and attended the University of Maryland. A rambling, scrambling quarterback, in 1953, he was runner-up for the Heisman Trophy, and San Francisco's first draft pick in the National Football League. In 1963, the Grey Cup was perhaps Faloney's greatest playoff performance. It was the day after John F. Kennedy's assassination, when most sports events were cancelled.

Mr. Faloney was a member of the Hamilton Rotary, part owner of a construction business and a member of the Canadian Football Hall of Fame.

I had the opportunity to meet Bernie at different charitable functions over the years. We had much in common, except for hunting foxes. He enjoyed horses and, with a close friend of mine, Max Cherneski, they would ride with the hounds, like royalty.

Mr. Faloney had suffered from colorectal cancer for the past year and wanted to start a public awareness campaign for the disease. When I awoke this morning to find that Bernie had died, my wife and I recalled his words when the cancer was discovered. "Don't feel sorry for me," he said.

We will not feel sorry for you, Bernie, but we do feel sorry for Hamilton and all your fans. They will miss you. God bless.

CONFLICT IN YUGOSLAVIA

VIOLENCE TOWARD WOMEN

Hon. Lucie Pépin: Honourable senators, war is a horrible occurrence under any circumstances. Recent reports coming out of Kosovo, however, point to incidents so hateful and sadistic that it becomes very difficult to envision how faith in humanity can continue.

• (1340)

With ethnic cleansing, the intent of the aggressor is so base, so twisted with blind hatred that their acts of war are unbearable in terms of the emotional and physical anguish they inflict.

The United Nations published a report two weeks ago detailing a significant upsurge in sexual violence against ethnic Albanian women in Kosovo. According to refugees' accounts, Serb soldiers target young women, ages 15 to 25, taking groups of five to 30 to unknown places by truck or locking them up in houses where soldiers live. Any resistance is met with threats of being burned alive or being beaten to death. Men who try to intervene are killed on the spot.

It would appear that rape is being used as a tool of war alongside violence, looting and arson. Rape can be a very effective means of destroying communities, both physically and emotionally. In many reports by refugees, the rapes were committed in public view, in front of family and community members. As one refugee explained:

> Rape is the worst thing you can do to an Albanian male... Killing a man or a woman is not half as bad and —

— the Serbs —

> — know that.

The stigma of being raped and violated in Muslim society is overwhelming. Rape victims describe themselves as dead to their families. Others fear being divorced or excluded from their communities. Rape is complete shame, utter humiliation for refugees from the villages of Kosovo. As one rape victim put it:

> At that moment I thought God doesn't exist. I thought they wanted to kill me, but no. They didn't want to kill me. I wanted to kill myself.

The relative vulnerability of women in society and the subordinate role they occupy during wartime leave them prey to great suffering. I am very encouraged that since the Bosnian war of 1992-95, rape is now prosecuted as a separate crime at the UN War Crimes Tribunal. This demonstrates that the reality of the experience of women in war is beginning to be officially recognized.

From the nurses who served so honourably and discreetly throughout the wars of this century, to female victims of war in Kosovo and other regions of conflict, we must realize that war is an experience that touches, involves and affects everyone in different ways. The role of women in war as soldier, as saviour or as victim must be understood, tended to and commemorated alongside that of men.

In order to achieve peace in Kosovo, we will need to recognize and remember the distinct experience of women. We will need to ensure that peace is brought, not only to the conflict between ethnic Albanians and Serbs, but also within the ethnic Albanian community itself. Kosovar Albanians will not be able to rebuild their communities fully until the spectre of rape and shame are exorcised from the minds of both men and women.

Honourable senators, I call on the Government of Canada to make rape counselling and aid to victims of rape and their families a significant part of the humanitarian aid to this region. There is no question that the experience of women in this war will have deep and profound consequences on ethnic Albanian Kosovars for generations to come. We must help them to overcome these deep wounds if they are to move beyond them.

MYTHS OF MULTICULTURALISM POLICY

Hon. Donald H. Oliver: Honourable senators, indications are that our summer break will soon be here. For some of us it is an opportunity to return to our homes, work in our gardens, play some golf and spend some meaningful time with our grandchildren. Perhaps most important of all it will provide an opportunity for reflective thought, and to catch up on reading a number of new books that have piled up as a result of the hectic pace here in Ottawa.

I should like to leave with honourable senators a couple of thoughts for consideration during their reflective moments this summer. They refer to Canada's current multiculturalism policy and whether it is wanting. Originally, I had intended to set down an inquiry and encourage a full debate on whether a special committee should be struck to study this important topic. As a result of many letters and discussions, I decided not to proceed that way.

Instead, I wish to place before you, in the two or three minutes remaining, some of the issues in the hope that some honourable senators will think about them during the summer, and perhaps this fall a viable course of action may make itself known to us. Here are the facts.

This country is undergoing great change in the composition of its population. The 1996 census reveals a country where more than 10 per cent of Canada's inhabitants identify themselves as belonging to a visible minority group. A recent study predicts that visible minorities will make up close to 55 per cent of Toronto's population in about a year.

Canada's multiculturalism policy had its origins in the report of the Royal Commission on Bilingualism and Biculturalism in the 1960s. The commission found that there were a number of minority groups in Canada with a clear sense of their identity which, without undermining national unity, wanted to maintain their linguistic and cultural heritage. Their presence in Canada enriched the cultural mosaic of our country.

Actually, most of the recommendations of the commission were directed towards achieving some form of recognition of the language and cultures of non-British and non-French ethnic groups. In fact, the commission recommended that the federal government formally reject the objective of the "melting pot" or assimilation theory.

In 1982, multiculturalism became entrenched in the Charter of Rights and Freedoms, as section 27 ensures that the Charter, and therefore Canadian laws which are subject to the Charter, must be interpreted in a way that preserves and enhances the multicultural heritage of Canada. As well, section 15 ensures protection against discrimination based on race, national and ethnic origin.

In 1988, the federal Multiculturalism Act was adopted and in 1991 we witnessed the establishment of the Department of Multiculturalism and Citizenship. The 1988 Multiculturalism Act, brought in by the previous government, enshrined in law the recognition of Canada's multicultural reality, the responsibility of federal institutions to reflect that reality and to implement multicultural policies, and gave the multiculturalism minister a special coordinating and advocacy role in order to implement the act.

The policy objectives set out in the act are decidedly proactive. The words "promote," "recognize," "encourage" and "enhance" are found many times throughout the 10 objectives. The act also sets out programs which could, if implemented, respond to these objectives.

Unfortunately, these objectives, the programs and the goals of a multiculturalism policy were never adequately explained to the people of Canada. As a result, certain myths have developed about multiculturalism policy, myths that are not founded in reality but which have become a lightning-rod for those who wish to fan the fires of racism.

In conclusion, honourable senators, let me tell you what one or two of those myths are in the hope that you will think about them this summer, and perhaps this fall we could review the myths: Multiculturalism has promoted ethnic separation among immigrants; it encourages the formation of self-contained ghettos; it exaggerates differences, driving wedges between the races and nationalities; it does not encourage immigrants to think of themselves as Canadians, but invites them to stay apart from the mainstream.

These, honourable senators, are the issues that I would invite you to think about, and perhaps this fall when we come back, we could reconsider them.

ROUTINE PROCEEDINGS

CRIMINAL CODE

BILL TO AMEND—REPORT OF COMMITTEE

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

Wednesday, June 16, 1999

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

TWENTY-SIXTH REPORT

Your committee, to which was referred Bill C-82, to amend the Criminal Code (impaired driving and related matters), has, in obedience to the Order of Reference of Monday, June 14, 1999, examined the said bill and now reports the same without amendment.

Respectfully submitted,

LORNA MILNE
Chair

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

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

• (1350)

NATIONAL FINANCE

SUBCOMMITTEE ON EMERGENCY AND DISASTER PREPAREDNESS AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Terry Stratton: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(*a*), I move:

That the Subcommittee on Canada's Emergency and Disaster Preparedness of the Standing Senate Committee on National Finance have the power to sit at 5:30 this afternoon today, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

Motion agreed to.

GOVERNMENT POLICY ON CHINA

NOTICE OF INQUIRY

Hon. Consiglio Di Nino: Honourable senators, as a result of being inspired by Senator Austin's response to my statement on Tiananmen Square, I give notice that on Friday next, June 18, 1999, I will call the attention of the Senate to this government's dealings which China and the effect on Canada and Canadians.

QUESTION PERIOD

THE SENATE

ABSENCE OF GOVERNMENT LEADER

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, due to an unavoidable absence, the Leader of the Government in the Senate is not able to be here for Question Period. However, I will take as notice any questions that honourable senators might wish to ask.

ORDERS OF THE DAY

MISCELLANEOUS STATUTE LAW AMENDMENT BILL, 1999

THIRD READING

Hon. Sharon Carstairs (Deputy Leader of the Government) moved the third reading of Bill C-84, to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain Acts that have ceased to have effect.

Motion agreed to and bill read third time and passed.

PUBLIC SECTOR PENSION INVESTMENT BOARD BILL

THIRD READING—MOTION IN AMENDMENT—VOTE DEFERRED

Hon. Michael Kirby moved the third reading of Bill C-78, to establish the Public Sector Pension Investment Board, to amend the Public Service Superannuation Act, the Canadian Forces Superannuation Act, the Royal Canadian Mounted Police Superannuation Act, the Defence Services Pension Continuation Act, the Royal Canadian Mounted Police Pension Continuation Act, the Members of Parliament Retiring Allowances Act and the Canada Post Corporation Act and to make a consequential amendment to another Act.

He said: Honourable senators, Bill C-78 amends legislation affecting a wide-ranging number and categories of federal employees. It has been typically referred to in the media and, indeed, at our committee hearings, as the bill to amend public sector pensions. Honourable senators should understand that the bill affects a number of different groups, including, for example, the RCMP, the Canadian Forces, and the two groups which we normally think of as public servants and the PIPS organization.

I should like to comment today on the four issues which were most commented on by the more than 30 witnesses heard by the committee during its consideration of this bill.

The first of these four issues is the ownership and disposition of the current surplus in public service pension plans, the so-called $30-billion surplus one sees referred to in various media reports.

The second issue is the management and governance structure of the proposed pension investment board, which will have responsibility for investing pension funds in public markets.

The third issue is the extension of death benefits to same-sex partners in a conjugal relationship.

The fourth and final issue which I will address is another which arose repeatedly before the committee, that is, the degree of stakeholder consultation which had taken place prior to the original tabling of this bill in the other place.

By way of background, the current surplus in the public service pension plans in Canada is in the order of $30 billion. That surplus has been built up over a number of years. It is important for honourable senators to understand that this fund has not always been in a surplus position. Indeed, there have been occasions in the past when, from an actuarial point of view, this fund was in a deficit position and the government was required to make up that deficit by making additional employer contributions. Indeed, over the years since public service pensions have existed, in the order of $13 billion in additional employer payments have been required from the government, and thereby from taxpayers, when the plan was in a deficit position.

The issue on which all representatives of public sector organizations spent a considerable amount of time in testimony before the committee was the issue of whether this surplus belonged, in whole or in part, to the employees or, as the bill suggests, to the employer, in this case the Government of Canada.

Honourable senators, in order to put this issue in context, it is important to understand the nature of a defined benefit pension plan. In a defined benefit pension plan, employees are guaranteed a pension whose value is determined by a formula which is arrived at through the use of two variables. They are: the length of service and the average salary over the employee's six best years.

Therefore, the guarantee that employees have when they join the public service pension plan is based purely on the basis of how long they are in the plan and what they were paid while they were working for the government.

• (1400)

The guarantee is not a function of whether the existing fund of money contributed by employees and by the employer is in a deficit position or a surplus position. That is what is meant by a defined benefit plan. The benefit to an employee is, in fact, defined by a mathematical formula.

Therefore in this case, regardless of whether it is the government or any other private sector employer with a defined benefit plan, the risk associated with that plan being in a deficit is entirely the responsibility of the employer. That is to say, if the fund is short of money, then the responsibility for making up that deficit rests entirely with the employer. Therefore, the corresponding side of that equation is that, in the event that the plan generates a surplus, then that surplus, in fact, ought to belong to the employer. That is the rationale used in this act, and indeed given in testimony to the committee by the President of the Treasury Board in order to defend the view that the surplus in the plan belongs to the employer.

Lest one begin to think that this is a unique situation related to the fact that the employer is a government and, therefore, a government has the ability to set legislative and regulatory rules governing pension plans, I would refer you to an article, just by way of illustration, from yesterday's *Wall Street Journal.* The very interesting article is about private sector defined benefit pension plans in the United States. They listed some 12 or 13 major American pension plans, all of which, for reasons very similar to the build-up of the surplus in the federal government pension plan, have significant surpluses.

Under U.S. pension law for defined benefit plans, that surplus belongs to the employer. That is essentially the same position that the federal government is taking with this bill. It is also a situation which applies to defined benefit plans in Canada unless the defined benefit plan has a particular type of trust arrangement. That does not exist in this case. If it did, a different set of rules would apply.

Therefore, honourable senators, in terms of the surplus issue, we must understand two very simple principles: First, since all of the risk, all of the down side, associated with the fund being short of money was borne by the employer, then in fact all of the upside which arises when the plan is in a surplus position should also belong to the employer. That position is not unique to this case. As I have said, it applies in private-sector plans with similar characteristics, not only in Canada but, to use yesterday's *Wall Street Journal* example, it exists in the United States as well.

That leads to the second issue I wish to address, which is how the investment board should be managed. What should be the role of the board? What should be its governance structure? Those are important questions. From a public policy standpoint, there is a major departure taking place in this piece of legislation from the way in which government employee pension funds have historically been managed in Canada. Historically, the so-called fund was in large measure a notional fund. In large measure, the contributions came into the government and there was no separate bank account into which these funds went. They came into the Government of Canada and the value of the fund was increased. From an investment standpoint, it was increased using essentially a bond-indexing formula to determine how much interest the fund would have earned in a given year had it been invested, in fact, in private-sector markets.

Bill C-78 proposes to create a private-sector investment board which will have the authority to take employee and employer contributions alike and invest them in private markets. In this sense, the bill reflects what currently exists in a number of provinces with respect to public employees. One thinks, for example, of the Ontario Teachers Pension Fund, a fund to which teachers and their employers contribute. Those funds are managed by the Ontario Teachers Pension Fund Board. Similar kinds of boards exist for a variety of other public-sector employees across the country.

Indeed, as honourable senators will recall, in December of 1998 this house passed a bill which set up a Canada Pension Plan Investment Board whose responsibility it would be to manage the funds in the future going into the Canada Pension Plan. In other words, the clear trend in the public sector — again not unique through this bill — is to move to a situation in which public sector pension funds, those funds contributed to by public-sector employer and employees, are placed in a separate fund, managed by an independent board with the responsibility and the right to invest those funds in the private bond and equity markets, subject to the kinds of constraints on any other pension fund.

In the nature of that investment system, the question is: What governance rules should apply to the fund? We were told, both by government witnesses and in some excellent testimony from unions and employee associations, that there had been lengthy negotiations on the governance of this fund and on what role, if any, employees should have in its governance. Those negotiations ultimately fell apart. The evidence would suggest that they fell apart on the issue of who owns the surplus and not on the issue of the appropriate governance structure.

Witnesses from both the Treasury Board and the employees' side indicated very strongly that they felt it would be possible, even with this bill in place, to continue negotiations and to very rapidly develop a joint management structure with the input from the employees and the employer. The structure would have both risk-sharing and surplus-sharing elements.

In other words, as part of the management structure, it would be understood that, in the future, if the fund was in a deficit position, the deficit would be made up through equal contributions or, perhaps more likely, a 60-40 formula. The historical ratio going into pension funds has been 60 per cent from the employer, to 40 per cent from the employees. In any event, by some negotiated formula, future deficits would be shared between the employee and the employer. Similarly, future surpluses would be shared.

As I say, honourable senators, the committee got very strong indications, which are reflected in the committee's observations printed in yesterday's *Journals of the Senate*, that it should be fairly easy to reach a reasonably quick conclusion on the best joint management structure with joint risk-taking. The committee felt very strongly and, I think it is fair to say, unanimously that such a joint management and joint risk-sharing structure was a critical element of public-sector pension plan management in the future.

In light of the testimony we have received, the committee intends to call the President of the Treasury Board and the heads of the major employee associations and unions to appear before the committee before the end of the year in order to bring us up-to-date on the extent to which negotiations are continuing, and to keep us up-to-date on how negotiations are proceeding. We believe that, by continuing to make this a public issue and by continuing to allow a public airing of views on the question, we can use some of the persuasive pressure of the Banking Committee to ultimately develop a situation in which such a risk-sharing and joint management structure is put in place.

• (1410)

Honourable senators, on that issue, frankly, I am optimistic that it will be settled before the end of the year. Therefore, the structure of the management of the Public Service Investment Board will change fairly rapidly.

The third issue which came before the committee on which we had three or four witnesses was that of the extension of death benefits to same-sex partners in a conjugal relationship. There were two different criticisms of this particular provision. One was the question of whether survivors' benefits ought to apply to anyone other than a couple in a heterosexual relationship.

The predominant view expressed by several witnesses was that the provision in this act, while consistent with the recent Supreme Court decision in the so-called *M. v. H.* case, does not go far enough. There are many situations of dependence in Canada in which someone is looking after, for example, an aged parent. That individual may be the aged parent's son or daughter or aunt or sister or whomever. That caregiver ought to have the right to receive survivor's benefits in the terms of a normal pension plan. That right should not simply be limited, as it is in this act, to cases of partnerships of the kind described in the act.

The committee again had a considerable amount of sympathy with that point of view. For that reason, one of the recommendations in our observations in the report is that the Treasury Board address that issue and find ways of broadening the definition of "dependent," and thereby broadening the definition of who is entitled to survivors' benefits beyond the more narrow definition contained in this act. The committee sees what is in this act as the first step in a two-step process, the second step being to broaden it to a much greater range of potential caregivers.

Finally, honourable senators, the fourth issue on which the committee heard a significant amount of evidence was the extent to which stakeholder consultation was not adequate. This particular piece of criticism came from both the representatives of the RCMP association and the representatives of some of the military organizations. They are not allowed under the law to form unions and therefore do not necessarily fit into the formal structure of union-management relationships. They, at least on the basis of the evidence before the committee, would like to leave us with the feeling that they were not as consulted as they should have been. They were not as plugged into the ongoing negotiation process as they should have been.

The committee had some considerable concerns about this, even though they are a relatively small portion of the total number of people affected by this bill. The fact that a group of people happens to be small or the fact they cannot form a union should not in any way mean that they be treated any differently than any other group of public servants. Therefore, in our report, we have said that when the negotiations proceed, very shortly we hope, on the development of a new management structure and a new risk-sharing structure for the Public Sector Pension Investment Plan, it is critical that the government ensure that all employee groups, regardless of whether they are represented by formal unions, have an opportunity to participate in those negotiations. That is one of the issues that the committee will be monitoring closely when it holds further hearings on this issue in the fall.

Honourable senators, by way of summary, this bill has been reported without amendment but with a clear recognition that there are some things in the bill which are of concern. We believe they can be settled more easily once the issue of the ownership of the current surplus is settled, as it will be settled by this bill.

With respect to the ownership of the pension surplus, the proposal in this bill is consistent with the way in which surpluses in defined-benefit plans are handled elsewhere, both in Canada and the United States, and perhaps elsewhere in the world. Therefore, honourable senators, we believe that the government has the right to the surplus.

Honourable senators, I have touched on the main items commented on by both Senator Stratton and Senator Tkachuk in their second reading speeches and also by the committee in its observations, which I would urge senators to read. They are attached to yesterday's *Journals of the Senate*. I am happy to answer any questions with respect to this bill. I look forward to closing the debate after some of my colleagues on the other side have had an opportunity to speak to it.

Hon. Gerry St. Germain: Honourable senators, my question is to the Chairman of the Standing Senate Committee on Banking, Trade and Commerce, and it relates to the question of same-sex benefits.

The honourable senator said that this is a first step. What guarantees are there that this will be treated in a manner that reflects fairness to everyone in our society? It took the Nisga'a 122 years to arrive at their agreement. What guarantees are there that people will be treated fairly? The pressure group that is pushing the issue as written in the bill certainly has never been an advocate of providing benefits to brothers and sisters, mothers and daughters. The honourable senator seems to want the world to trust the government. On what basis does he want this trust factor to go forward?

Senator Kirby: The honourable senator is quite right that I made the observation that I thought this was the first step in a two-step process. I think the committee is adamant that it should be the first step in a two-step process.

However, even if it was not the first step in a two-step process, the reality is that this change is required as a result of the recent Supreme Court decision in *M. v. H.* This change is essentially a court-mandated change. If this change is not in the bill, it will clearly be challenged. As I understand the legal opinions, the *M and H* decision in the Supreme Court would lead to same-sex benefits being included in this bill.

The more important question the honourable senator has raised is the need for organizations and bodies like this one to continue to push for the second step. It is the second step that will broaden the survivor's benefit notion of a pension plan. It was always designed to ensure that the caregiver of someone who passed away would be compensated because the process of giving care had taken them out of the market-place and the employment workplace. It is not a guarantee, but if we continue to press that issue, I hope we will get it solved.

The particular section on same-sex benefits is required in any event.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, the honourable senator has referred to a court case. Can the senator tell us whether, in that decision, the phrase "conjugal partner" is used?

Senator Kirby: That is a wonderful question for a non-lawyer to ask a non-lawyer. I am not sure whether that is the exact phrase. I would have to check. The honourable senator cannot expect me to remember that off the bat.

• (1420)

We have been told that this particular section of the bill is required in order to meet the spirit of that court decision. I cannot give you a legal ruling on that because I am not a lawyer, but that is the advice that the committee received.

Senator Kinsella: Your report contains the heading "Survival Benefits for Conjugal Partners of the Same Sex." What do the words "conjugal partner" mean in this report?

Senator Kirby: I think you are asking whether we need the word "conjugal," or whether one just says "same-sex partners."

Senator Kinsella: What do you mean by that?

Senator Kirby: Do you mean to ask what the committee means by it, as opposed to singling me out? By that, the committee meant exactly what was meant in the Supreme Court decision, which said that if a couple, whether of the same sex or the opposite sex, whether married or not married, had presented themselves as a partnership on an ongoing basis for a period of time publicly, that is what defines the partnership and legitimizes the notion of support.

If your question is: Could we have written that section without using the word "conjugal," the answer is that we probably could have done so. However, we simply tried to use the terminology that all the witnesses had used in giving evidence before the committee.

Senator Kinsella: Consequently, if you see that there is some faultiness in accuracy of language by using that adjective "conjugal," then the report would be improved by having it amended to drop that term.

Is the issue one of dealing with same-sex benefits, with which I have no difficulty?

Senator Kirby: The answer to the question is "yes."

Senator Kinsella: Therefore, you would accept an amendment to the report to delete that term?

Senator Kirby: If you wish to amend the report to take the word "conjugal" out of the observations to the report —

Hon. Sharon Carstairs (Deputy Leader of the Government): That should have been done yesterday, honourable senators.

Senator Kinsella: Why would I do it yesterday? It has just been presented here.

Senator Kirby: The short answer to your question about the essence of the same-sex benefits is "yes."

Hon. Marcel Prud'homme: Honourable senators, the question was raised by Senators St. Germain and Kinsella regarding the same-sex benefit. Years ago, I read a document from Treasury Board that was marked "confidential." I never believed in that, but it was circulated in the Senate to some senators. By mistake, perhaps, I got a copy, so I read it. That document was very interesting. It stated clearly that, "We may have no problem in solving the question of same-sex benefits, but we hope that the question of brothers and sisters, among many other things, will not be raised, because then we have no answer."

Today, in France, there is a vigorous debate going on between the l'Assemblée nationale and the Senate on this exact question that could be extended to mean two people who do not necessarily live in a conjugal way. Everyone seems to point their finger and ask whether or not that is affecting him or her. I do not care.

Everyone knows that I am 65 years old and that I have lived with my family all my life. I live with my sister, but I am not alone here, even in the Senate. Some people live with their mother and they take care of each other. Others live with their brothers and they take good care of each other. I have no objection to what is taking place at the Supreme Court, unlike Senator Kinsella and Senator Lynch-Staunton and anyone else who may wish to speak about this matter, but what will it take for everyone to have the same treatment?

I am not concerned about myself. I raised this matter in the area of Montreal that I used to represent. I conducted a poll on one street in that area, which is highly populated. I can switch to French, but many people do not understand French here and they do not switch. That means that I am speaking to myself. I make mistakes in English, but I do not care. I do not correct my speeches.

I wish to ask the honourable senator the following, namely, does that require court action? Is that the route that must be taken? On that street, seven inhabitants of that area were affected. That is to say, they were either brothers or sisters living together in that area. I live in an old district of Montreal. They told me, "I have a nephew or a niece who lives in a same-sex relationship and life has changed. What about us?" I have no answer for them.

Can you kindly help me out in our reflection here today? You have already touched upon it and I like your sensitivity, but give us more.

Senator Kirby: I do not know that I can give you more. You are asking if I have an answer. The answer is that I do not have an answer. I have said that this report states that we recognize this as a significant problem, and we recognize that it is an issue that needs to be dealt with, sooner rather than later, by governments — not merely the federal government but by governments in general. Your example is a wonderful one. We had some examples before the committee of exactly the same thing.

The committee certainly hopes that this is the first step in a two-step process, which would deal, ultimately, with settling the issue that you raised. We are very sympathetic to the issue you raised.

Senator St. Germain: Honourable senators, my supplementary question is directed to the honourable senator. He paraphrases what the Supreme Court has decided. Some of us do not necessarily believe in same-sex benefits, and I would like that to appear on the record as well.

Does the committee — that is, since the honourable senator does not want to be addressed as an individual — that the honourable senator represents and speaks for today not see a desire for leadership here? The fact is that the courts may have decided as they have, but that does not necessarily mean to say that they are right. Supremacy resides in this place and in the other place. This is the ultimate court in this land, not the Supreme Court of Canada. I understand that, with our new Charter of Rights and Freedoms, things have changed. However, I see it from the perspective that this is the court of last resort. By "this" I mean the House of Commons and the Senate.

Does Senator Kirby not see a requirement for leadership on the part of the parliamentary process to give guidance to the court system so that we, and not the courts, control the destiny of the nation?

Senator Kirby: Honourable senators, I have answered this question about four times. I have said that I understand the need for leadership by the parliamentary process, as well as by government. I have also said that the report states that the committee believes that government should seriously address the question of expanding the definition of "survivor" in terms of survivor's benefits in the pension plan. The committee has said that. I do not know what more we can say by way of a report for leadership. We have recognized the issue.

• (1430)

Senator Prud'homme has provided excellent examples from the area in Montreal that was his riding. The committee clearly recognizes that there is a problem. It is the hope of the members of the committee that by raising this issue, there will be some discussion as to where it would be best addressed, whether with the Human Rights Committee or the Social Affairs Committee.

Clearly, the notion of further exploration and discussion of that issue is warranted. That is exactly why we put it in the report. What more do you expect of us?

Senator St. Germain: Why did the report not cover Senator Prud'homme's situation of brothers living together?

Senator Kirby: Let me be clear, Senator St. Germain; the report says that this is an issue with which government needs to deal.

What was very clear from the testimony before the committee was that this is a non-trivial problem in terms of deciding exactly what the phraseology is, to make that definition of "survivor" the definition that most of us would find reasonable. That is not something one can do overnight. That is a complex problem. It is also an expensive problem. When actuaries do their calculations for pension plans, they take into account not only how long the individual is anticipated to live, but also the extent to which the 60 per cent survivor benefit is likely to have to be paid. That was not a problem that we could solve in a short period of time.

We do recognize the problem. We have said that people ought to deal with it. I do not know what more the honourable senator expects of us.

Senator St. Germain: I would have preferred amendments to the proposed legislation. I know that the expansion of the definition is an expensive path to follow. We are exploring an area that will be very costly to all taxpayers if it is totally opened up. However, if you take the first step, as you described it, some of us believe that those steps should be taken together, and not in isolation from one another.

Senator Kirby: That is a legitimate point with which the committee obviously did not agree.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I should like to get back to safer ground, for us, at any rate.

I wish to congratulate the committee for its thorough report, and the way in which Senator Kirby has interpreted it. It shows how well this place can do a job. When you compare what the other place did in regard to this bill, there is no comparison.

The report, however, cries out for at least one amendment. I am surprised that the committee did not go further. I am speaking about the joint pension management board. I understand, as the report says, that talks between Treasury Board and the major union broke down because the major union would not give up its claim to part of the pension surplus. The government used that argument to discontinue discussions in regard to the creation of the board. Whether or not we accept that argument, it now appears that the government is willing to re-enter discussions with the public service union, which it is hoped will lead to the creation of a joint pension management board.

In conclusion, on that issue, the report recommends that the Treasury Board immediately resume discussions, meaning "right now." Whereas, in the minister's letter he simply states:

> It is my firm belief that it is in the best interests of both plan members and the government as employer to have a jointly managed pension arrangement...

He also indicated that discussions would take place as soon as possible.

Both sides seem to agree on the creation of the board, although not necessarily on the timing of the discussions. I do not know why the committee did not recommend an amendment which would force the creation of the board and have it included in the bill, unless it is there and I have not seen it.

Senator Kirby: That is a very reasonable question. The difficulty with imposing a joint management board is that an integral part of a joint management board is also a joint risk-sharing of the deficit and sharing of the surplus. It is my understanding, from testimony given by the minister before the committee, that the government was not prepared to impose on its employees a requirement to bear part of the risk should the plan be in a deficit position in the future. The government felt that that potential cost to employees could only occur with the approval in advance of the employees. That was the reason for the negotiation. Therefore, since a key element of a joint management board is that both sides not only have a share of the surplus but also a share of the deficits, if the government were not prepared to enforce the potential cost of sharing the deficits upon employees, both the government and the committee felt that we should not do that, either. Therefore, we were not prepared to proceed in that fashion.

The nature of the exact formula by which the sharing of risks and surpluses will occur is something that obviously needs to be negotiated. A simple example of that would be: Is the sharing of risks and surpluses 50-50? Is it, as has historically been the case with public service pension plans, that the employer paid traditionally 60 per cent of the cost and the employee paid 40 per cent? At the present moment, the employee is paying 31 per cent and the employer is paying 69 per cent.

The reluctance to impose, by legislation rather than agreement, an additional cost on employees would have resulted in introducing an amendment to force the issue of a joint management board. That led the committee to urge that it be done, but we did not move an amendment. Nevertheless, we seriously discussed the question of whether that amendment was desirable.

Senator Lynch-Staunton: My other question is, the senator did mention in his remarks — and it is alluded to indirectly in the report — that both the Canadian Armed Forces and the Royal Canadian Mounted Police personnel affected, because they do not negotiate and are not recognized at a negotiating table, have been pretty well left out of this discussion. They have been somewhat secondary to the discussion. The senator did say that they are not large in numbers or dollars. However, they are still directly affected.

Will they be part of the discussions with Treasury Board, or will they just be tacked on to whatever agreement comes out of the discussions between the Public Service Alliance and the government?

Senator Kirby: With regard to the RCMP and the Defence group, in particular, and their negotiations with the government, there was some conflicting evidence as to the extent to which they had been consulted. Both sides would agree that they were not absolutely full partners at all the meetings. There is some debate as to whether or not some of the discussions constituted adequate consultation. However, the committee's view is that those groups must be included for exactly the reason that the Leader of the Opposition has suggested.

The committee intends to pursue this issue vigorously in the fall. We will not only ensure that the President of the Treasury Board comes before us, but that any of the employee organizations have that right as well. We will do everything in our power to ensure that those groups are included, because your point is well taken: The fact that a particular group, for essential service reasons, is prevented from becoming a fully qualified union, and the fact that they may be small in number, should in no way impinge on the importance of recognizing that they are a group of public servants whose views need to be taken into account. We made that clear in the report. We have made that clear to the minister.

My hope is that the government will take that seriously when the time comes to commence these discussions. If they do not, I can tell you, on behalf of the committee, unanimously, that we are more than prepared to intervene to ensure that the government becomes involved.

• (1440)

Senator Lynch-Staunton: Finally, would the chairman of the committee agree that the discussions might be accelerated and come to a speedier satisfactory conclusion if this bill were not passed? I see no urgency to pass this bill. There may be some but I have not found it. I suggest that, if we did not pass it but let it lie over the summer, we would alert the government that the bill will not be given final approval until those discussions are held and reach a satisfactory agreement. I sense that, if the bill is passed now, those discussions may be prolonged indefinitely.

Senator Kirby: Again, honourable senators, that is a very good question. Let me try to respond. This is a little difficult because one must try to understand the position of the union leaders in entering into these negotiations. If the issue of who owns the current surplus is not resolved by legislation, I feel it would make it virtually impossible for a union to reach a conclusion on the issues of the governance of the plan and the sharing of future deficits and surpluses. This point was expressed very eloquently by a number of union leaders, and most particularly by Mr. Bean and Mr. Krause. To them, the primary issue of concern in this bill is the issue of the surplus. They said that, while looking to the future is important, they were reluctant to get into detailed discussions on the future until the current issue of the surplus was off the table. Therefore, my guess would be that it would be impossible to reach a conclusion on the management, the governance structure and the allocation of future surpluses and deficits until the issue of the current surplus has been dealt with categorically.

[*Translation*]

Hon. Roch Bolduc: Honourable senators, let us forget about the past and talk about the future. Why would employees and unions and employees' associations want to contribute to a system of shared responsibilities when they now have a guarantee? I do not see the advantage for them of switching over. Historically, their premiums have never gone up; the government has made up the difference.

[*English*]

Senator Kirby: Honourable senators, it may very well be that the employees do not want that, but I think, in fairness to Senator Bolduc, I should give one specific example, the Ontario teachers. Their union made a decision sometime in the last 18 months that, in order to have the advantage of being able to share in future surpluses, they were prepared to share in future potential deficits, provided they were given a significant influence on the management of the fund. That is a case of a group of public servants — they happen to be teachers — who, when faced with this alternative, decided to opt for it.

However, if the honourable senator's question is, supposing they do not agree, will the government continue to pay all the deficits, then I presume that is exactly the way it would be. That is certainly what the law says. There are recent Canadian examples which indicate that employees have been willing to accept the up and the down that goes with this kind of a solution.

[*Translation*]

Senator Bolduc: The two situations are very different. Current employees are starting from zero, while those in the Ontario pension fund already have a surplus in the billions. It is not the same at all.

[*English*]

Senator Kirby: Honourable senators, I would have to check exactly how the historical surplus was handled in the case of the Ontario teachers, but I think you will find that all of the original surplus did not stay in the plan. A certain amount stayed in the plan, as a certain amount would have to stay in this plan, for actuarial reasons, but I think a significant amount of the surplus came out of that plan at the time of the changed management structure. I would have to check that but I believe that was the case.

[*Translation*]

Senator Bolduc: The bill is entitled:

[*English*]

> An Act to establish the Public Sector Pension Investment Board.

[*Translation*]

In French, it reads: "L'Office d'investissement des régimes de pension."

[*English*]

Does that imply that there is only one fund or many?

Senator Kirby: There are currently many plans but only one fund. By that, I mean that there is a series of pieces of legislation, as enumerated in the long title of the bill, indicating that there are clearly several plans. Up until now, they have not been kept in a separate fund. The intent is to create, by this bill, a single pension fund which will manage several different pension plans, all of which are plans for different groups of public servants. That is the intent.

[*Translation*]

Senator Bolduc: In the event that some of these plans perform less well than others, will money from the common pot be used for a bailout, or will premiums be modified? It must not be forgotten that 60 per cent of these funds are funded with taxpayers' dollars.

[*English*]

Senator Kirby: Honourable senators, a number of the details of how the plan will be managed will have to be worked out by the pension board, but it is my understanding that the intent is to manage it as one single fund, even though in fact the assets technically will belong to different plans. Therefore, the problem the honourable senator raised about one fund being worth more or less than the other is not an issue because it will be essentially pooled resources.

Hon. Donald H. Oliver: Honourable senators, I have two questions. I would be grateful if the honourable senator would clarify them for me.

When responding to the last question from the Leader of the Opposition, Senator Kirby said that, if this bill did not pass, the unions would have difficulty dealing with the so-called question of the current surplus of $30 billion.

My question is as follows: Was there not conflicting evidence before the Banking Committee about the lawsuits that are currently outstanding, and the effect of the passage of this bill on the lawsuits in relation to the surplus?

My second question relates to corporate governance. One of the questions Senator Kirby asked was: What governance rules should apply to this fund? He went on to explain how the joint management will likely be established as a result of negotiations. However, in the past, the Banking Committee has conducted a number of studies on the principles of corporate governance. Indeed, the Banking Committee has made recommendations to the government in relation to corporate governance, dealing with such things as appointment of directors, number of directors, training, competence, and so on.

How do the provisions of Bill C-78 follow the committee's previous recommendations with respect to corporate governance?

Senator Kirby: Honourable senators, on the first question, the honourable senator is quite right that, early on, there was some conflicting evidence on the issue of whether this bill had any impact on the outstanding court cases, but the final evidence we had was from Mr. Jolicoeur, the chief federal negotiator, and from the lawyer for Treasury Board, who made the observation that the court cases have nothing to do with the question of the surplus, but rather with the manner in which the actuarial assumptions lead to actuarial forecasts. As I understand it, the issue of the ownership of the surplus is not an issue in the court cases.

Senator Oliver: So those court cases would not be foreclosed by this?

Senator Kirby: It is my understanding — in fact we were categorically told — that those court cases were not foreclosed.

On the second question, as to the extent to which the management board in this report matches the recommendations the committee made — and I suspect the honourable senator means the ones we made on CPP — there is a significant amount of similarity, although there are some relatively minor differences.

• (1450)

The committee focused on the issue of trying to get beyond the type of board that exists with the CPP to a joint employee-employer board with risk-sharing. At one point I had a list — which I would be happy to provide to the honourable senator before tomorrow — of all the similarities and the relatively minor differences. It is quite similar to the CPP board. The question was whether it is similar to the recommendations we have made.

There are some differences, just as there are differences on the CPP board. However, when the CPP board was set up at the end of last year, there was an agreement that there be a statutory review within three years, and that it be done by the committee. Second, there was an agreement that a response to the differences between our recommendations and the governance of the CPP board would be forthcoming at the time of that review.

This board, in fact, is very similar to the CPP board. To that extent the honourable senator is quite right in asking whether it mirrors all of our recommendations on the CPP board, and the answer is "no." That is one of the reasons that we talk, in our observations section of the report, about ensuring there is a statutory review in three years. We would like to get back at this board the same way we got back at the CPP issue.

Hon. Joyce Fairbairn: Honourable senators, over the period of time that this bill has been in circulation, many of us in this chamber have been approached by members of the superannuate organizations and individual Canadians. In some cases the concern has been about the future of their plan. On the other hand, there has been a desire to have a different approach to the sharing of the surplus. In the hearings, was the committee able to assuage some of that concern? With respect to the question of the surplus, did you come any closer to agreement?

Senator Kirby: Honourable senators, I do not know if we were able to assuage the concerns. It is certainly true that we heard some excellent witnesses from retirees' associations, existing superannuates, if you will. The fact of the matter is that they are under a defined benefit plan. They have a commitment or an explicit contract with the government to pay those future pensions according to the formula under which they retired. There was never any suggestion, even from the unions, that any of those benefits were at risk in any way, shape or form.

All the evidence before the committee was to the effect that this was not a real issue, although I think everyone understood the degree of unease of some of the superannuate organizations. We tried to meet their concerns, or at least to assuage them. It is hard to tell whether one was successful, but one can state categorically that there is no risk whatsoever to anyone currently on pension.

Hon. Anne C. Cools: Honourable senators, I rise to speak to the third reading of Bill C-78. I shall limit my remarks to this clause 75, which replaces section 25 of the Public Service Superannuation Act. Under the heading "Payments to Survivors, Children and Other Beneficiaries" the new section 25(4) states:

> For the purposes of this Part, when a person establishes that he or she was cohabiting in a relationship of a conjugal nature with the contributor for at least one year immediately before the death of the contributor, the person is considered to be the survivor of the contributor.

The important words are "relationship of a conjugal nature."

I note that Bill C-78, clause 75, does not say "a conjugal relationship," but states rather "a relationship of a conjugal nature." By this poorly conceptualized and ineptly drafted phrase "relationship of a conjugal nature," Bill C-78, a bill establishing the Pubic Sector Pension Investment Board, enacts survivor benefit pensions to same-sex partners. It fails to legislate adequate treatment for homosexual persons. It fails to protect the institution of marriage. It is the duty of Parliament to uphold and protect marriage and to legislate accordingly.

Honourable senators, I wish to challenge senators and the government to review the manner in which this government has advanced and proceeded with these questions. We owe these issues a full and comprehensive examination and debate in Parliament, where the legal, political, philosophical and moral questions can be heard, considered, debated and decided. We have a duty to do so. In contrast, the courts have had a free hand, and have romped and galloped into political and policy areas which are not theirs. The courts are not the proper fora for these decisions. The public's unhappiness with judicial activism is palpable, and the results are unsatisfactory.

Parliament must insist that proper and adequate legislation be enacted to meet these challenges. This matter, buried deep in these few clauses in this 200-page bill, was before the Standing Senate Committee on Banking, Trade and Commerce chaired by Senator Michael Kirby, who, as always, did an excellent job.

Honourable senators, Iain Benson, a constitutional lawyer and Senior Research Fellow at the Centre for Renewal of Public Policy, appeared before the Standing Senate Committee on Banking, Trade and Commerce on June 9, 1999. In his testimony about clause 75 of Bill C-78, he said:

> I wish to comment on the question of the processes by which the matters central to our common good are dealt with in Canada at the moment. Mr. Chairman, and honourable senators, I am gravely concerned by what I see. We are witnessing, with respect to certain foundational notions in our culture, not the coordinated thoughtful processes of ordered government that mark a civil society, but the piecemeal, fragmented patchwork approach that testifies to indecision, fear, lack of clarity and even political cowardice.
>
> What is needed is leadership. It is the role of every man and woman who has taken an elected office, or the appointed office of this chamber, to exercise that leadership. I say that with great respect. It is leadership and vision I am asking you as a concerned citizen of Canada to consider tonight. It is an aspect of this bill that has only received the slightest attention prior to being reviewed by this committee that provides the general context for my comments. The surrounding years of litigation and public debate provide the specifics.

Mr. Benson spoke to the fundamental notion of our society and of the thoughtful processes of ordered government in civil society. He referred to the years of litigation.

Another witness, Gwen Landolt, lawyer and Vice-President of Real Women of Canada, appeared before that committee also on June 9, 1999. She provided the committee with an analysis of the litigation and judgments around same-sex benefits. These cases included the 1999 Supreme Court of Canada's *M. v. H.*, the 1995 Supreme Court's *Egan and Nesbit v. Canada*, the 1998 Ontario Court of Appeal's *Rosenberg and Evans v. Canada*, and the 1980 Ontario District Court's *Molodowich v. Penttinen*. She also cited the definitive case on marriage, the United Kingdom's 1866 case of *Hyde v. Hyde*. Both witnesses asserted that the term "conjugal" is a matrimonial term and that sex alone is not an adequate basis on which to found the notion of entitlement to survivor benefits. Mrs. Landolt said that the concept of "no sex no benefits" was unworthy.

• (1500)

Honourable senators, this issue, same-sex pension benefits, was responded to by the Minister of Justice, Anne McLellan, in the Senate eight months ago, in her testimony before another Senate committee, the Standing Senate Committee on Legal and Constitutional Affairs. At that time, the bill before that committee was Bill C-37, to amend the Judges Act, in particular its clause 1. That clause was immortalized by former Supreme Court Justice Willard Estey who described it as the "harem clause" because it would have allowed justices to have two surviving spouses concurrently. I called it the "double-spouse clause."

Minister McLellan appeared before that committee on September 23, 1998. She responded to Senator Serge Joyal about including same-sex pension benefits for judges in that clause. Senator Joyal wished her to amend clause 1 in Bill C-37 to include same-sex spouses. In declining to include same-sex benefits at that time in that clause, Minister McLellan said:

> I will be very candid: This government's expressed approach to this is that we will deal with every case on a case-by-case basis. The court has said that it will take a similar approach. However, I would remind honourable senators — and I said this in response to Senator Bryden — that we are doing policy work that potentially speaks to a fundamental change to whom benefits might be extended within Canadian society, at least within the federal jurisdiction, and that we do not want to restrict ourselves to a discussion simply of same sex or opposite sex, but to consider a more legitimate question in Canadian society which is one of true dependency. When that work is done, as I have already indicated, we may return to both you and the House of Commons with an omnibus piece of legislation which will deal with the extension of benefits and entitlements of one sort or another on the basis of dependency. That work is well on its way, and my colleagues and I will be talking about it in detail starting next week.

That was eight months ago when the minister spoke to Bill C-37. We now have Bill C-78 before us. Certainly Minister McLellan and the cabinet could have fixed this problem and these insufficiencies and the question of dependencies within Bill C-78. The government must simply find a way to accommodate the concerns and interests of homosexual persons to pension benefits without any further diminution of marriage. The government must cease manipulating the words and the accompanying legal meaning of the words "man," "woman," "husband," "wife," "marriage," "spouse," and now "conjugal."

Honourable senators, the legal and definitional manipulation, so rampant in the courts and in government, is cruel, divisive, prejudiced and unnecessary. The term "conjugal relationship" is a marital or matrimonial term, and "marriage" means between a man and a woman. Marriage was originally a sacrament of the Roman Catholic Church and was originally proscribed by canon law, later underwritten by civil and statute law. In the "Solemnization of Marriage Service" in the Anglican Church's prayer book, the 1549 Book of Common Prayers, it states, in part at page 564:

> Matrimony was ordained for the hallowing of the union betwixt man and woman; for the procreation of children to be brought up in the fear and nurture of the Lord; and for the mutual society, help, and comfort, that the one ought to have of the other, in both prosperity and adversity.

This concept of marriage must no longer be diminished and undermined. I shall return to the words "mutual society, help, and comfort" later.

Honourable senators, I would like to record some dictionary definitions of the word "conjugal" and the plain meaning of the word, and explain the word's origins. The *New Shorter Oxford English Dictionary* defines conjugal as:

> ...of or relating to marriage, matrimonial; of or pertaining to a husband or wife in their relationship to each other.

The term conjugal has its genesis in the Latin term *coniugalis* or *conjugalis* — in Latin, "I"s replace "J"s — a Latin word that means "relating to marriage." There are several Latin words for marriage. They include *coniugium, matrimonium, nuptiae, conubium*, and *consortium*. Translated into English, these terms mean, respectively, conjugal, matrimonial, nuptial, connubial, and consortium, and all are expressions of the several discreet dimensions and elements of marriage.

The celebratory festival itself was the *nuptiae*, nuptials; the conjugal was the obligation to bring forth offspring in marriage; the consortium was the right and duty to sexual performance of one partner to the other; and the *matrimonium* being the several obligations pledged to each other and to the *familia*.

Every act of sex is not a conjugal act. Neither is every sexual bed a conjugal bed. Nor is every act of sex a relationship. Undoubtedly, a conjugal relationship's unmistakable and defining characteristic is the pledge to bring forth issue, offspring, children, in marriage. For centuries, the weight of jurisprudence and law has supported this.

The recent Supreme Court of Canada decision in *M. v. H.* held that section 29 of the Ontario Family Law Act, the spousal definition provision that included a common-law spouse, should also be extended to same-sex partners. However, the Supreme Court judgment claimed that it was not touching the issue of marriage in *M. v. H.*, while in its *Nesbit and Egan v. Canada* judgment it said that marriage was not discriminatory and is still in force. Senators should note that the Ontario Family Law Act and its predecessor act, the Family Law Reform Act, whose predecessor was the Deserted Wives' and Children's Maintenance Act, were all intended to strengthen marriage. The long title of the Family Law Reform Act, 1978, which repealed and replaced the Deserted Wives' and Children's Maintenance Act, was "an Act to reform the Law respecting Property Rights and Support Obligations between married Persons and in other Family Relationships." The current Family Law Act still upholds and defends marriage, and states:

> Whereas it is desirable to encourage and strengthen the role of the family; and whereas for that purpose it is necessary to recognize the equal position of spouses as individuals within marriage and to recognize marriage as a form of partnership; and whereas in support of such recognition it is necessary to provide in law for the orderly and equitable settlement of the affairs of the spouses upon the breakdown of the partnership, and to provide for other mutual obligations in family relationships, including the equitable sharing by parents of responsibility for their children;

Honourable senators, one of the most beautiful and best articulations of conjugality I have been able to find is in the Roman Catholic Church's book, *Catechism of the Catholic Church.* Under the heading, "The Goods and Requirements of Conjugal Love," it states at page 368:

> Conjugal love involves a totality, in which all the elements of the person enter, appeal of the body and instinct, power of feeling and affectivity, aspiration of the spirit and of will. It aims at a deeply personal unity, a unity that, beyond union in one flesh, leads to forming one heart and soul; it demands *indissolubility* and *faithfulness* in definitive mutual giving; and it is open to *fertility.*

• (1510)

I repeat, fertility — the commitment to bring forth children, this unique, miraculous product of the union of two opposites, a man and a woman.

This concept of marriage has been arbitrarily eroded by certain judicial activists in our courts. The issue of judicial activism is a social issue in Canada. I note that on July 1, 1999, a conference entitled "Legal Recognition of Same-Sex Partnerships: A Conference on National, European, and International Law" will be held at the University of London in the United Kingdom. I note that it will feature Supreme Court of Canada Madam Justice Claire L'Heureux-Dubé among its panelists.

Honourable senators, the issue is pension benefits, not acts of sex, not acts of sex-like activities. The issue is pension benefits. The heart of the issue is the manner in which obligations are made and assumed in human relationships and the manner in which governments and Parliament stand behind those obligations as they are made. That is the heart of the question.

Grounding pension obligations in sexual acts, in sex-like acts or in activities of a sexual nature, is surely doomed because such grounding is unsupported by human nature, by intellectual concept, by moral precepts or even common sense. Sex does not a relationship make. Sex does not a commitment make. Sex does not an obligation make.

We must remind ourselves that, in point of fact, pensions enter most relationships at the stage of life when sex is not dominant, when the natural sex drive is diminishing for all and mostly over for some.

The Government of Canada, in Bill C-78, has failed marriage and has also failed homosexual persons. The government should have found a better way legislatively to accommodate the concerns of homosexual people and of all relationships of economic interdependence and dependency without supporting any assault on marriage.

Senator Kinsella: Would the honourable senator entertain a question?

In the report that we are examining, as contained in the *Journals of the Senate* today on page 1755, there is a heading just before the conclusion of the report, "Survivor Benefits for Conjugal Partners of the Same Sex."

I had asked the chair of the committee for his definition of that phrase. Would the Honourable Senator Cools care to comment on whether or not she finds that phrase, "conjugal partners," contentious? Does she think it should be deleted from the report?

Senator Cools: I thank the Honourable Senator Kinsella for his question.

I am not too sure how one goes about deleting from a report once it has been adopted by the chamber, so I will not answer the questions that speak to the procedural issues of the report itself. I shall speak to the substantive issues, though.

I also note that the honourable senator had asked Senator Michael Kirby about the term "conjugal relationship" and whether that term had been used in the Supreme Court decision *M. v. H.*, as it is commonly called.

The term "conjugal relationship" was not used in *M. v. H. M. v. H.* was decided on the issue of spousal support. Section 29 of the Ontario Family Law Act allows claims to be made for common-law spouses. *M. v. H.* concerned itself with the issues of section 29 of the family law, but it did not use the word "conjugal."

In point of fact, the term "conjugal" is not binding on this government at all. The only case law that included the term "conjugal" is *Rosenberg*, which was decided by Madam Justice Rosalie Abella. In reference to other cases, Madam Justice Abella declared that those other cases were wrongly decided and that she would decide on her own this particular instance of *Rosenberg*.

The peculiar thing that jurists and the legal minds of this chamber should be pondering is that *Rosenberg* is a provincial case that never went to the Supreme Court of Canada. As such, it is not binding on the Government of Canada in any form or fashion. It is something of a stretch of the imagination, a little leap into politics to suggest that that particular judgment must be followed or adhered to.

Coming now to the honourable senator's particular question regarding page 1755 of today's *Journals of the Senate* and the heading, "Survivor Benefits for Conjugal Partners of the Same Sex," I did make an express point at the beginning of my speech that even the drafting of the bill itself is insufficient. The bill does not say "conjugal partners." It does not say "conjugal relationship." Bill C-78 says clearly "a relationship of a conjugal nature."

If I had been drafting that report, I would not have drafted it in that way. The real question hovers around what I have said in my speech. First, the debate has never really unfolded in this chamber. It is time for us to bring on the debate, and that is why I welcome it. The real issue revolves around the definition of the word "conjugal." This particular less-than-adequate articulation as embodied in Bill C-78 is an open-ended invitation for endless litigation.

Some people will say, "That is fine; leave it to the courts." That is always an unsatisfactory response. It is our bounden duty to legislate clearly and without ambiguity, especially in the area of pension benefits.

• (1520)

I would add to Senator Kinsella's concern that, for those of us who are watchers and readers of these judgments — and I invite every senator to do so — the courts have been on a ruthless, uninterrupted, one-way street towards striking down marriage. I decided to speak to this issue today because I sincerely believe it is a process that must be arrested.

I know that Senator Kinsella has been very protective of homosexual people from persecution, prosecution and violation. I remember some of the initiatives that he has taken. It is very troubling and problematic that, on this issue, debate is truncated because so many people live in fear of being accused of an "ism" or a "phobia" of some kind. Consequently, many people who believe very deeply that marriage must be respected, just as homosexual people must be protected, are frequently trapped. It is a form of terrorism. It is a potent tool, a powerful instrument, to accuse anyone who raises a social concern or a criticism of an "ism."

As a black person, I know much about "isms." Had I been a member of that committee, I would have paid much more attention. I would have wanted to know, specifically and explicitly, why the Government of Canada employed those express words in drafting the legislation. Everyone who knows anything about parliamentary process or courts and government knows that a chamber cannot be too careful about drafting. As far as I am concerned, that bill was been drafted deliberately to intentionally invite a great deal of litigation.

Hon. Edward M. Lawson: Honourable senators, I have a number of concerns about this bill, particularly in the area of the surplus. By way of background, in my former life I negotiated pension plans, helped to create joint trustee pension plans, and dealt with grievances where there was no joint management of funds. I dealt with many cases where companies wanted to take a surplus that did not belong to them. We pursued those companies in court to make them put the money back.

There was a classic example here in Canada recently. An employer in this province found a $60-million surplus. He thought it was his, and he took it out. The court ordered him to put it back. In that case, there was a union involved, and the money went to the rightful beneficiaries.

Perhaps the most glaring example of the abuse of pension funds was with respect to a steel company in the U.S. that went bankrupt. It had lots of assets in buildings and lands, et cetera. When it was in Chapter 11, its estimated value was $500 million to $600 million. When the bidding started, to everyone's surprise and shock, the successful bidder offered $1 billion for the company's assets.

It then became known that there was a surplus of almost $900 million in the pension fund. The buyer took that as his own, with no resistance from the beneficiaries, and used it to pay for the company. There was no attempt to find the beneficiaries who had given their working lives to the company. The new owner took that money as a matter of right.

In Senator St. Germain's questions to the chairman, he spoke about the minister saying "trust us." With the minister's record of legislating people back to work after they have reached an agreement, I do not have a lot of trust in him.

In common, I am sure, with most other senators, I have received many complaints from people in the military, the RCMP and the public service about unfair treatment. On their face, these appear to be very justified complaints. They have apparently not been resolved by management, which exclusively controls and manages the pension fund.

A headline in *The Vancouver Sun* of Sunday, June 5, caught my attention. Reporter Stephen Hume wrote an article headlined: "Widows of ex-Mounties have been abandoned." It reads:

> Increasingly frail, many in their 80s, approximately 1,800 widows of rank-and-file RCMP veterans who served before 1949 when pension rules were revised are now abandoned by a government that exploited them like indentured servants.
>
> Unlike other public servants, their husbands' meagre benefits don't cover surviving spouses. Ottawa justifies this by blaming dead veterans for imprudence, oblivious to the irony of voluntarily extending survivor benefits to same sex couples while ignoring elderly widows.
>
> This callousness infuriates Harold Clark, retired in 1965 after 25 years service.
>
> "We have senior officers' widows drawing two pensions and we have the aged widows of constables, women who served the RCMP for many years without any pay, who have no pensions at all," says Clark, a Victoria resident.
>
> Wives in small rural detachments maintained the post, fed and cared for prisoners, put up visiting officers and ran communications while their husbands were on patrol. And if their husbands got killed in the line of duty? Bad luck.
>
> "Some of our members were injured on duty — they would get a disability pension. But the pension dies with you, so their widows would be cut off... This is just an act of cruelty," Clark says. "There is a great disparity and injustice here."
>
> This sorry mess dates back to an RCMP widows and orphans fund set up in 1934 and Ottawa's botched attempts to fix it. As the Manitoba division of the RCMP Veteran's Ladies Association pointed out in a 1985 brief to Ottawa, the pension scheme was unworkable from the start.
>
> Lower ranks were paid such low wages — $1.50 a day during the Depression — many couldn't afford to buy in after 1949 for past service. Those who did often had to withdraw money to pay for children's education or unexpected medical expenses.

> "Voluntary" withdrawals forfeited all accrued interest. This means, Clark argues, that the fund behaved less like a pension than a sleazy tontine, rewarding those able to stay in with larger annuities as the number of subscribers dwindled.
>
> "Parliament replaced one inequity — employer contributions to the officers' plan but not the NCOs and constables — with another — the legalized theft of the NCOs and constables accrued interest, but not the officers," Clark says.
>
> "Many, many letters with respect to this disgrace have been written to the commissioner and members of Parliament," he points out. One notice from government advised pensioners to "spare your spouse this surprising and traumatic news" and warn her early that she'd be cut off.

There are many other examples. This one is parallel to what happened in the NHL. The Honourable Senator Frank Mahovlich will be aware of this. I was aware of it because I served as a director of the Vancouver Canucks hockey club. When there were six teams in the league, they established a pension plan. They paid the hockey players very poorly, but assured them that, since they would have a short career span, in most cases, they would have a very generous pension.

Honourable senators, they did not have a generous pension, but the employer said that they had a surplus. With the new players coming in and demanding higher pensions, they would take management's money, which was the surplus, and use it to pay the younger hockey players. Where did the management's money come from? It came from paying the players smaller salaries.

Long-serving players of that era received a pittance in pension. They took it to court. I sat on the board when the matter came before us. We said that the NHL was wrong, that it had no right to go to court, that the money belonged to the players. The players won the first round, the second round and the third round before the Supreme Court. They finally achieved some equity in their pensions.

I see no difference between that case and this. Here, there a $30-billion surplus. I do not know how the Liberal government can consider taking this. It can get the taxpayers on its side by saying that they will only be taking money from a few hundred thousand members of the RCMP, the military, and the public service, while the rest of the taxpayers will benefit because the deficit will be cut. This is nothing more than a sop to the masses in order for the government to steal the surplus. It is wrong.

• (1530)

The bill should say, "Before we touch a dime of the surplus, we will establish an independent, impartial committee that is knowledgeable about and understands pensions, and we will review the RCMP widows and the others, the government employees, the military." Who is the business agent for the military? The general in charge? Who is the business agent for RCMP? The commissioner? Who will represent the people whose money this is?

If you ask any member of the government or cabinet during all of those years what those funds were for, they would say that it was a pension fund for the beneficiaries, the Mounties, the military, and the widows. That is what it is for. What happened? Why does it suddenly belong to us? If the government has such a guaranteed, legal right to it, why does it need legislation to take it? It could just be transferred internally. The government does not have a right to it.

The absolute minimum that would satisfy me would be to establish a committee of the Senate. In that way, experienced people who know and care about fairness and justice can ensure that every one of the beneficiaries has been fairly treated and has received their legal entitlement. Then, if there is a surplus, it can be dealt with beyond that.

The surplus should never leave the fund. There is a surplus today, but people are living longer and collecting benefits longer. It is only a matter of time before the fund could be in a deficit situation. A surplus in the fund would help to alleviate any potential deficit situation.

I cannot support this legislation. I cannot be party to taking what belongs to the beneficiaries. Until the government satisfies me that it has taken care of the people who rightfully are entitled to these funds, I cannot support the legislation.

Hon. Nicholas W. Taylor: Honourable senators, I wish to speak only on a small part of the bill, and my concern is similar to that of Senator Cools.

Here in the Senate, we pride ourselves on ensuring that the legislation is clear, well written, and thoroughly studied. Unfortunately, Bill C-78, in the state in which it is before us, is very unclear in its extension of survivor benefits to same-sex couples.

Clause 25(4) on page 51 of the bill reads:

> For the purposes of this Part, when a person establishes that he or she was cohabiting in a relationship of a conjugal nature with the contributor for at least one year immediately before the death of the contributor, the person is considered to be a survivor of the contributor.

We know what "cohabiting" means, and we know what "one year" means, but what exactly does "conjugal" mean? In the other place, members debated this issue for hours without coming to a real conclusion. "Conjugal" is not defined in the bill. We are referred to the courts.

In the recent *M. v. H.* decision, the Supreme Court mentioned the following characteristics of a conjugal relationship. Let me first say, however, that I sometimes share Senator Cools' view of the court interpreting social progress, but to blame the court is wrong because we are the ones who make the laws. If the laws are not interpreted in the way in which we intended, we should change them.

The Supreme Court said that characteristic of conjugal relationship include the following:

> ...shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception as a couple...

In other words, it is much looser than what my colleague Senator Cools had said.

Would all of these characteristics have to be fulfilled in order for a relationship to be considered of a conjugal nature? The answer is most obviously "no." In other words, a sexual relationship, the phrase that is bothering some people, is not the only criteria and could easily be missing. The other criteria include perception as a couple, economic support, personal behaviour, and so on. Couples who are unable to have children and do have sexual relations can nonetheless be considered in a conjugal relationship. We are left to wonder how many of those characteristics would be judged sufficient and who would decide if they were present. How would a person, as described in the legislation, successfully establish that they have been in a relationship of a conjugal nature? The answer is far from clear.

We are also left to wonder why the sexual aspect of a relationship has anything to do with pensions or this bill. Trudeau once said that the government had no place in the bedrooms of the nation. Are we now saying that the government does have a place in the bedrooms of Canadian citizens? Is sexual activity an appropriate characteristic upon which to be allocating pension benefits? I would argue that the answer is "no," and I think that many senators would agree with me.

Even if one thought that the answer were "yes," what could a government possibly require as proof of a sexual relationship? I suppose a receipt from your Viagra dealer. We cannot put cameras in the bedrooms of Canadians or demand receipts. It is absurd to think that we would decide not only that sexual activity is an appropriate thing upon which to allocate survivor benefits, but also that it is something that we could realistically control or verify.

Honourable senators, this bill would make more sense if it did not include the word "conjugal" or any problems that accompany that word. Not only would we get out of the touchy issue of proof, but also it would allocate benefits on criteria that seem more essential to the pension benefits.

When a person buys life insurance, he or she can designate the beneficiary of their choice. Why should a contributor to pension plan under Bill C-78 not have the same opportunity? What about the elderly woman being cared for by her daughter or the two brothers growing old together on the family farm? They are not relationships of a conjugal nature, but they are examples of caring, committed, dependent or interdependent relationships. Are they any less important or any less deserving of survivor benefits?

Mr. Tucker, the Secretary-General of the Canadian Human Rights Commission, said in a recent article in *The Globe and Mail* that he expects to start receiving complaints of discrimination from people in non-sexual relationships involving dependency. He points to the Human Rights Act, which does prohibit discrimination on the basis of family status. It is true that we should not discriminate against gay partners because of their sexual orientation, but neither should we discriminate against heterosexual roommates who have shared everything for years.

In Hawaii, they have found a solution. They have found a system that seems to work well. Unmarried citizens are free to name what they call "reciprocal beneficiaries." Thus, by making a formal declaration, gay partners could name each other, as could a widowed mother and her unmarried son. They circumvented the problems the words "conjugal relationship" would present, and extended benefits to other relationships as well. This system of a formal declaration is similar to that in Scandinavia, where they use the words "registered domestic partnership." Two political areas in the world have circumvented this problem.

It has been estimated that the extension of survivor benefits to the beneficiaries who are dependent upon but not necessarily sexually involved with contributors would cost approximately $30 million annually in Canada. That sounds like a lot of money. However, honourable senators, the present pension plan has $130 billion in it. Even if only 5 per cent per year were earned by this plan, the interest on that would be $6.5 billion annually. Thus, for a mere one-thousandth of 1 per cent of the total pension growth each year, we can make this bill much clearer, much more sensible, and less discriminatory.

This bill has much to commend it; however, with some changes to the definition of "survivor," it could be much better.

Hon. Terry Stratton: Honourable senators, the debate on Bill C-78 has been full. Much has been said about the various issues. In the normal course, I would not need to speak to it; I could sit down. However, I will not. We must indicate where we on this side of the chamber are coming from.

• (1540)

Honourable senators, it is not unusual for a bill to come back from committee with a report that expresses concern both about the way the bill has been handled and the need to address several other matters arising from the bill. The committee did not amend the bill, but it had obvious problems with it.

Our mandate is to serve as a check against bad legislation conceived in haste by the government of the day and rushed through the House of Commons without proper scrutiny. Bill C-78 is just that: bad legislation that has been hastily drafted and rushed through the House of Commons without proper scrutiny.

I know that government senators are feeling pressure from their leadership to get this passed so that it does not die on the Order Paper should Parliament prorogue in the fall. I know you are feeling pressure not to accept amendments as, heaven forbid, the House of Commons would need to be recalled to deal with them. We have stayed a few extra days and members of the other place could come back, if they must. At the very least, this bill should be put on hold until after the summer so that the government can reflect upon both the testimony that has been presented and the report of the committee. In other words, let the minister live up to his word, which he gave in a letter to the chairman of the committee.

The problems with this bill are many. They have been talked about; however, I will repeat them and I will try and keep it brief.

First, there is the matter of the surplus. The government is exempting itself from the very law that it set out barely a year ago for the private sector through Bill S-3. That law simply states that if ownership of the surplus is not spelled out in the rules of the pension plan, the employer cannot touch it without the agreement of two-thirds of the plan members.

Not only has the government decided that this principle should not apply to itself, but by making the bill retroactive it will render moot the lawsuits now under way regarding the $11 billion that it has already taken from the plan. Senator Kirby has stated and gave assurance to the contrary, but I still think it is a concern. I do not think we can take Senator Kirby's opinion for granted. If Mr. Jones, an ordinary guy, is suing Mr. Smith for breach of contract, Mr. Smith cannot win by changing the ground rules. He cannot win by rendering the object of the lawsuit non-litigable. Why should the government be any different? Is there not a moral principle here as well as a legal one? There must be. Senator Lawson has stated that, essentially, it is robbery.

Second, there is the issue of future surpluses. We have a surplus now because the actuaries were too cautious, with premiums set too high. Let us look ahead. There is nothing in the bill to stop the government from deliberately setting premiums too high in the future so that it can then strip the surplus. Not only is the actuary not independent — just ask the last one and look what happened to him — but the government can ignore the actuary when it sets the premiums. The committee said the joint pension board should decide what to do with any new surpluses. I hope the government is listening.

Third, the government has decided against a joint board to manage this plan, although almost everyone agrees that there should be one, including the committee. The President of the Treasury Board gave an undertaking to continue to try and come to agreement with the unions on a joint board. If there is a joint board, then accountability issues such as who audits the plan, investment rules, access to information, the skills of board members, the relationship of the board to the actuary, and so on, would be far less relevant. Board members would be ultimately responsible to the employer and to plan members for the decisions they make. Both sides would be responsible for the quality of those that they send to the board.

Fourth, because the board is exempt from the Access to Information Act, plan members would not have the right to demand information, for example, about the cost of those January junkets to Jamaica. They could not get information like that. Indeed, witnesses said that they cannot demand of the board the kind of information that would let them call the board to account — a concern that was echoed by the committee. The annual report will not give you the kind of information that you need to ensure that the discretionary powers are being exercised in an appropriate manner.

Fifth, this board can hire and fire its own auditor. If they think the auditor is on to something — poof, she is history. They are gone. The trip to Jamaica remains quiet. The auditor has no job tenure and is hired and fired by a board that is not accountable to the pension plan members. To think this was cooked up by Treasury Board. If this is not a joint board, then the primary auditor should be the Auditor General or, failing that, the auditor should be named by the minister so that there is some distance between the board and its auditor.

Sixth, also arising from the lack of a joint board is the qualification of its board of directors. If this was a joint board then the employer, the employees and the superannuitants would be responsible for the quality of the board. If they want a lay board, then, fine, that would be their call. If they want a board of pension professionals, then that would be their call as well. Those who speak on behalf of the employees told us that they have little faith in the board nomination process that this bill establishes.

Seventh, representatives of RCMP senior management, rank and file officers, civilian staff, and members of CSIS were part of the failed consultations leading up to this bill. Nor were the military. The government seems to have said, "The public service unions will not agree to surrender the surplus without a court fight so everyone else can take a hike as well." The government needs to sit down and discuss a number of pension issues with the RCMP, including both an appropriate structure for plan management and a benefit structure that is appropriate to police work. The parts of the bill dealing with the RCMP should be suspended until those discussions are concluded.

Eighth, there is the matter of Canada Post. The government has unilaterally decided that Canada Post employees will no longer be part of the Public Service Pension Plan. It must set up its own plan. There were no discussions with the employees of Canada Post about this. Canada Post is unable to answer basic questions about what its plan will look like in the future. This part of the bill should be put on hold until someone can answer those questions. Indeed, the committee recommended that the government ensure that Canada Post employees not face benefit reductions as a result of this change.

Ninth, honourable senators, is the matter of the appropriate legal environment for this plan. The pension plans for public servants are not subject to the minimum safeguards set out for private sector pensions through the Pension Benefits Standards Act nor to the benefit maximums set out through the Income Tax Act. Why does the government continue to exempt itself from its own laws? Is there not a moral issue here as well?

Tenth, there is the lack of a review mechanism. Having decided there would not be a joint board, the government then proceeded to cut and paste this bill together. Some of it is cut and pasted from the CPP board legislation; some of it is cut and pasted from other legislation. The officials admitted in committee that they did not ask anyone outside of government whether or not the accountability framework in the bill was appropriate. Imagine that! No one from outside government, no outside pension experts were asked their opinion. That is remarkable.

The eleventh point concerns the term "conjugal" — and I said this in my speech at second reading. The testimony before the committee was far from conclusive. Different lawyers and different experts told us different things. The only thing I can tell you with certainty is that when different lawyers offer different legal opinions, then those same different lawyers have a lot of billable hours ahead of them. That is assured.

I would also remind the Senate of the amendment that the Legal and Constitutional Affairs Committee made to Bill C-37, the bill dealing with judges' pensions which was alluded to by Senator Cools.

• (1550)

While Bill C-37 had an opposite sex definition of a common-law relationship, it also had a one-year conjugal test. Should the government not take the time to consider this and perhaps come back with a new bill? Above all else, it is important that we not proceed in a way that would open the door to more legal wrangling.

In conclusion, I realize that many members of the government are torn between their desire to do what is right and their desire to vote the party line. Here is a solution: Rather than vote to defeat this bill, vote to put it on hold. If you do so, you will not be voting against the bill, you will simply be telling the government to think it over and do something. We could say, "Live up to your commitment, Mr. Minister. You said you would. Let us see you put it into practice."

Voting for a delay would give the minister time to review the bill, in order to determine if the accountability structure could be improved. It would give the government time to take another stab at negotiating a joint board. If a joint board were negotiated, a new bill would be needed in any event. The government could take a good look at the committee report and could perhaps bring in a new bill that more fully reflects those recommendations. A delay would give the government time to rethink its test for survivor benefits, and to be certain that it does not create a new round of work for the legal community.

MOTION IN AMENDMENT

Hon. Terry Stratton: Therefore, honourable senators, I move, seconded by Senator Lynch-Staunton:

> That the Bill be not now read the third time, but that it be referred back to the Standing Senate Committee on Banking, Trade and Commerce so that the Committee may monitor discussions between Treasury Board and affected unions over matters contained in the letter of the President of the Treasury Board referred to the Report of the Standing Senate Committee on Banking, Trade and Commerce on Bill C-78; and
>
> That the Committee report back to the Senate no later than September 7, 1999.

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker: Would those honourable senators in favour of the amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Would those honourable senators opposed to the amendment please say "nay"?

Some Hon. Senators: Nay.

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

And two honourable senators having risen.

The Hon. the Speaker: Please call in the senators.

Hon. Mabel M. DeWare: Honourable senators, I move, pursuant to rule 67(1), that the standing vote be deferred until tomorrow, Thursday, June 17, 1999, at 3:45 p.m.

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

Hon. Senators: Agreed.

The Hon. the Speaker: Therefore, the vote will be deferred until tomorrow, Thursday, June 17, 1999 at 3:45 p.m. The bells will ring at 3:30 p.m.

PRIVILEGES, STANDING RULES AND ORDERS

TWELFTH REPORT OF COMMITTEE PRESENTED

Leave having been given to revert to Reports of Committees:

Hon. Shirley Maheu, Chair of the Standing Committee on Privileges, Standing Rules and Orders, presented the following report:

Wednesday, June 16, 1999

The Standing Committee on Privileges, Standing Rules and Orders has the honour to present its

TWELFTH REPORT

On Thursday, June 10, 1999 the Senate adopted the following motion:

> That the issue of the rights of all Senators to be able to participate in the standing votes in the Senate that have been requested in accordance with rule 65(3), and the procedures followed on June 9, 1999, regarding the vote to adjourn the debate on the eleventh report of the Privileges, Standing Rules and Orders Committee, be referred to the Standing Committee on Privileges, Standing Rules and Orders.

On Wednesday, June 16, 1999, your committee heard from Senator Murray, P.C.

Your committee will continue its study of whether or not a question of privilege has been established. However, as an interim measure, your committee makes the following recommendation:

> That the Whips be advised that notwithstanding any Rule of the Senate, the bells to call in the Senators for a standing vote that has been requested in accordance with rule 65(3), shall be sounded for not less than 20 minutes.

This recommendation would not apply where a standing vote immediately follows another standing vote.

Respectfully submitted,

SHIRLEY MAHEU
Chair

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

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

PRIVATE BILL

CANADIAN DISTRICT OF MORAVIAN CHURCH OF AMERICA— SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Taylor, seconded by the Honourable Senator Chalifoux, for the second reading of Bill S-30, to amend the Act of incorporation of the Board of Elders of the Canadian District of the Moravian Church in America.—(*Honourable Senator Atkins*)

Hon. Norman K. Atkins: Honourable senators, I know that Senator Taylor has been waiting patiently for me to speak to Bill S-30. My intervention at second reading on behalf of my colleagues on this side of the chamber on Bill S-30 will be brief.

Honourable senators, I make no comment on the bill. If the church believes the amendment is necessary, and the amendment does not prejudice existing rights and is legally correct, I see no reason why it should not proceed to committee for study and, in due course, be adopted by the Senate.

However, as I stated when I addressed this chamber in relation to Bill S-20, a similar corporation sole bill, I do not believe that the Senate — or, indeed, Parliament — should be seized with these bills. I believe the incorporation of these types of religious organizations or amendments to the original acts of incorporation should be dealt with through an administrative procedure. This could be done either by amending the Canada Corporation Act or through a stand-alone statute dealing with corporations sole.

We have evolved as a society to the point where Parliament need no longer be involved in these matters. This would be similar to the evolution of the role of the Senate in relation to divorce. Now all matrimonial matters are dealt with by the courts, and not through Parliament.

Historically, the corporation sole developed to ensure continuity in the passage of fixed assets or lands belonging to a religious organization on the death of a senior official, director, bishop, et cetera. On the death of the clergy person, the property would be passed, not to that person's successor but would remain in the name of the diocese.

It is time we addressed this anachronism in our law. It is my intention in the new session, which we all await with great anticipation, to introduce a private member's bill which will allow the process by which these corporations come into being to be changed through an administrative procedure. This will end the necessity of dealing with these bills in our national Parliament. I hope all members in this place would support such a bill.

• (1600)

Hon. Nicholas W. Taylor: Honourable senators —

The Hon. the Speaker: Honourable senators, if Senator Taylor speaks now, his speech will have the effect of closing debate on second reading of this bill.

Senator Taylor: Honourable senators, I wish to compliment Senator Atkins on his very succinct comment on the bill, and assure him of my cooperation on his private bill. I took this issue on to clean it up because it had been sitting around since 1992 and there were Albertans involved. I found it quite bothersome, trying to explain how busy we were in the Senate when we had a bill that had been sitting here since 1992. I am very glad that it is finally moving along.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Taylor, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

[*Translation*]

SCRUTINY OF REGULATIONS

SIXTH REPORT OF STANDING JOINT COMMITTEE ADOPTED

The Senate proceeded to consideration of the sixth (A) report of the Standing Joint Committee for the Scrutiny of Regulations (approval of funds to attend the biennial conference on delegated legislation in Sydney, Australia), presented on June 15, 1999.

Hon. Céline Hervieux-Payette: Honourable senators, I move adoption of this report.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

PRIVATIZATION AND LICENSING OF QUOTAS

REPORT OF FISHERIES COMMITTEE ADOPTED

On the Order:

> Resuming the debate on the consideration of the third report of the Standing Senate Committee on Fisheries, entitled "Privatization and Quota Licensing in Canada's Fisheries," presented in the Senate on December 8, 1998.

Hon. Fernand Robichaud: Honourable senators, the Standing Senate Committee on Fisheries tabled through its chair, the Honourable Senator Comeau, on December 8, 1998, its report entitled "Privatization and Quota Licensing in Canada's Fisheries."

After hearing over 60 witnesses express their views on the issue of quota licensing in Canada, the committee found that this issue has generated a great deal of interest and concern among fishermen, coastal communities and the fishing industry in general. The committee's report reflects the many concerns relating to the basic principles governing quota licensing, namely whether we should be talking about a private or a common right.

An economic analysis of the quotas does not seem to take into account the distribution of fishing revenues and can result in an attribution that is not always fair in terms of social equality and distribution of wealth.

As a result of the ten recommendations in the report, the Minister of Fisheries and Oceans, the Honourable David Anderson, appeared before the committee on June 2, 1999. The committee appreciated very much the minister's testimony.

In its ninth recommendation, the Standing Senate Committee on Fisheries recommended that the Department of Fisheries and Oceans share the resource more equitably so that the small-scale fishers could play a greater role in the industry.

Honourable senators, there seems to be a significant shortcoming in the allocation and distribution of quota licenses. The documents on this subject reveal that there is no clear policy on the way they are awarded. Many witnesses spoke of this.

For the benefit of all the parties involved and affected in varying degrees by the issue of quota licenses, we recommend that the Department of Fisheries and Oceans clarify its position by clearly defining its policies in this regard, because fishers and Canadian coastal fishing communities depend on it.

Honourable senators, I move adoption of this report, seconded by the Honourable Senator Butts.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

OFFICIAL LANGUAGES ACT

PROGRESSIVE DETERIORATION OF FRENCH SERVICES AVAILABLE TO FRANCOPHONES OUTSIDE OF QUEBEC—INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Simard calling the attention of the Senate to the current situation with regard to the application of the Official Languages Act, its progressive deterioration, the abdication of responsibility by a succession of governments over the past ten years and the loss of access to services in French for francophones outside Quebec.

Hon. Jean-Claude Rivest: Honourable senators, I wish to join the debate initiated by Senators Simard and Gauthier on the matter of official languages. For the past four or five years, I have participated regularly in meetings of the Standing Joint Committee on Official Languages. I would like to take this opportunity to tell all members of this place about the particularly serious problems that exist with respect to the Official Languages Act.

Canada will host the Francophone Summit in Moncton. Just as naturally, representatives of Canada will give all sorts of wonderful official speeches about the vitality of Canada's linguistic duality.

That will not be the time to mention the problems facing francophone communities outside of Quebec. They must fight very hard for their survival because, to all intents and purposes, they are no longer receiving the political support that was there when the Official Languages Act was passed.

Honourable senators, we remember that when the Right Honourable Pierre Elliott Trudeau introduced this legislation in the 1970s, he gave a firm political undertaking. He also took political and electoral risks by defending Canada's linguistic duality.

In recent years, as the Commissioner of Official Languages pointed out in his report, there is no longer strong national leadership with respect to the defence and promotion of Canada's linguistic duality. Canada's political leadership is extremely quiet on the issue of official languages. This can be seen whenever there is a provincial election anywhere in Canada. This often does irreparable harm to the cause of francophones outside of Quebec, Canadians living in minority situations, and English-speaking Quebecers.

Honourable senators will remember that following the adoption of the Official Languages Act, the Right Honourable Pierre Elliott Trudeau had it enshrined in the Constitution in 1982. This significant constitutional guarantee does not refer to the country's linguistic duality, which was included in the Meech Lake Accord and which, unfortunately, failed, as we all know. This is why, following the failure of the Meech Lake Accord, the issue of linguistic duality was enshrined in Canada's Constitution, thanks to the initiative and leadership of the Right Honourable Brian Mulroney.

This most sensitive issue was discussed at length. Since then, Canadian leadership has evaporated. There is no longer any leadership in Canada.

I remind you, honourable senators, that the Commissioner of Official Languages, Mr. Goldbloom, said in his last report that one of the great problems for Canadians, both francophones and anglophones, is that, for some mysterious reasons that have something to do with a lack of courage, there is a lack of Canadian political leadership.

I must also mention the situation of Canadians who are members of a linguistic minority. In Quebec, English-language Quebecers are concerned about the drop in the birth rate. These people are also the victims of rather petty practices on the part of the Parti Québécois government, as relates to the use of English in hospitals and to advertising in certain cities.

The incidents that occur have more to do with the pettiness of Quebec political leaders than with the legal objective status of the rights of anglophones in Quebec, both in the National Assembly and within the public service.

For all health and social services, an act guarantees access to services in English everywhere in Quebec, regardless of the numbers. Educational rights are guaranteed. The issue of anglophone Quebecers living in a minority must be taken into consideration.

This issue is of a totally different nature than that of francophones living outside of Quebec as, in several regions of Canada, the survival of French is the fundamental issue.

The rate of assimilation of French Canadians is horrendous. It can reach 60 per cent in some regions. Very dynamic regions such as New Brunswick and Eastern Ontario have a 30 per cent rate of assimilation. This is both dramatic and disturbing.

It is my duty, as Senator Simard's initiative indicates, to point out that political leadership with respect to this situation does not jeopardize the legal or jurisdictional element proposed by Prime Minister Trudeau in the 1970s. The legal reality has not really changed, but the situation is in constant flux, to the detriment of Canada's linguistic duality.

This is of grave concern. Canada's political leadership must wake up and take hold of this heritage, which is one of Canada's basic features, so as to revive the hope, life and dynamism the francophone communities outside of Quebec have had and continue to have. They need the support of Canada's leaders.

The situation is all the more difficult for francophones outside of Quebec, as, with budget cuts, an incalculable number of programs and forms of support for them were abandoned, thereby annihilating the efforts of the francophone communities to create a dynamism and a life in French outside of Quebec.

The federal government has failed to meet some of its responsibilities. The Official Languages Act recognizes linguistic equality in government services. The commissioner discovers gaps and weaknesses annually. The government more or less manages to act on complaints.

Section VII of the Official Languages Act is very important. It requires all departments and agencies of the government to contribute to the support of the minority communities within Canada.

The Joint Committee on Official Languages requires the various departments to report. These reports are extremely disappointing. They are written in haste. It is clear the departments have very little interest in the importance of this aspect of Canadian life.

All francophone groups outside of Quebec point to the federal government's failure to implement Part VII of the Official Languages Act, which deals with the institutions and economic, social and cultural activities of linguisitic minority groups. This is one of the tragic realities faced by francophone minorities outside of Quebec.

According to the Fédération des francophones hors Québec, one of the main problems is that there is no one responsible for implementing programs to support French-speaking communities outside of Quebec.

The Minister of Canadian Heritage and the President of the Treasury Board share responsibility for implementing the Official Languages Act. Every year the ministers tell us that they have made great progress in the year gone by but that many problems remain.

The reason this is all we get is very simple. The President of the Treasury Board and the Minister of Canadian Heritage have very heavy ministerial responsibilities. We have all had experience of life in politics and in public administration. A short speech is prepared for the minister to use in his appearance before the Standing Joint Committee on Official Languages. This speech contains nothing but platitudes, when the threat to the life of the French-speaking community outside of Quebec requires a much stronger and more enlightened conscience and leadership.

This does not come from me, but from the communities, which point it out annually in their testimonies before the committee. The Commissioner of Official Languages keeps saying it, but the departments' responsibilities are diffuse. The Fédération des francophones hors Québec et des Acadiens has explained many times that there are not five or six solutions to implementing the objectives proposed in the 1970s in the Official Languages Act, and confirmed in Canada's new Constitution in 1982. There is only one real solution. The Prime Minister must make one minister responsible for the application of the Official Languages Act. If he is unable, let him assume the responsibility himself. Administratively, let him provide new leadership in this issue so important to Canada's future.

I propose that a deputy minister at the Privy Council level assume the administrative leadership with respect to the Official Languages Act. The deputy minister of Canadian Heritage, and the minister and the deputy minister at Treasury Board have many concerns besides the Official Languages Act.

Honourable senators, the Minister of Canadian Heritage, her deputy or the deputy at Treasury Board are involved with departments. When the deputy minister of Canadian Heritage calls his counterpart at Transport, who is responsible for an airline or a railway company, he has a problem, he is not the boss. He has no authority. He is a deputy minister like any other deputy minister. In professional terms, the people do their work, I have no problem with that.

There is talk of the cabinet shuffle coming perhaps in the fall. It would be important for those with the Prime Minister's ear to mention the major claim by all minorities across Canada. They want someone, somewhere in the federal public administration, to be responsible for implementing the Official Languages Act. Heritage Canada and Treasury Board take turns being criticized.

Honourable senators, I support the initiative of my colleague Senator Simard. It seems to me that it should be an essential duty of an institution such as the Senate to look at this linguistic duality, which is an important dimension of the Canadian reality. We are witnessing an extremely dangerous slippage affecting French life in Canada. Everyone must be aware of this, including political leaders, who must act on this awareness by taking steps to correct the situation. Honourable senators, such correction requires a leadership that is simple, and which assumes its responsibilities.

Hon. Eymard G. Corbin: In his speech Senator Rivest referred on several occasions to the francophone community living outside Quebec. I am surprised that he would use such language since, after all, we never refer to Quebec anglophones as anglophones living outside Canada.

We French Canadians living in New Brunswick, Acadia, Ontario, Manitoba or elsewhere do not like our linguistic status to be defined in relation to Quebec. This is particularly true since some Quebecers unfortunately booed us on several occasions. Who cares about minorities?

The proper way to refer to francophone communities is to use the expression Fédération des communautés francophones et acadienne du Canada. That is their new name, precisely because the federation and its members did not want to be defined in relation to Quebec. We do have rights and guarantees under the Constitution. The francophone and anglophone communities in Quebec also have rights and protections under the Constitution. Quebec has nothing to do with that.

That being said, we appreciate the honourable senator's support. I think he is right about a lot of issues. What is most disappointing about the proceedings of the Standing Joint Committee on Official Languages is that, year after year, we keep hearing the same thing over and over. The committee does not really address the fundamental issues, including the fact that there is no one at the helm, and the ship is adrift.

Senator Rivest is right. Please remember that we do not like to be defined in terms of Quebec.

Senator Rivest: It is a question of semantics.

Hon. Fernand Robichaud: Honourable senators, I agree with the Honourable Senator Corbin, and would simply like to say to all those listening that we Acadians would like to be recognized for what we are and not for what we are not.

[*English*]

Hon. Joan Fraser: Honourable senators, further to the comments of Senator Corbin on Senator Rivest's very appropriate remarks, I, too, am glad this debate has occurred. I, too, think it is important that, as the retiring Commissioner of Official Languages has said, we all take it upon ourselves to show leadership in promoting Canada's linguistic duality. However, as a member of one of the language minorities, I would have trouble being identified solely as a member of a particular organization. La Fédération des communautés francophones et acadiennes is a wonderful group, but there is a distinction to be made between organizations, however wonderful, and the people they represent. To stretch the case a little bit, I would resent bitterly having my community referred to as Alliance Quebec.

[*Translation*]

Hon. Marcel Prud'homme: I would have a comment —

The Hon. the Speaker: We must ask for leave to extend the debate then, because the time is up. Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Prud'homme: Senator Simard has covered the subject well. Our colleagues Senators Gauthier, Rivest and Corbin have made their point eloquently. I could say a lot about the rights of English-speaking Canadians in Quebec, who perhaps have less to complain about than all our good French Canadians outside of Quebec. I know them. They are disappearing in Western Canada. They are dying out. They are pleading for help. I know them well. Whenever I am out west, I ask Senator Gauthier for the list of francophone associations and French-language schools.

When I see the great defender of the Acadian people, Louis Robichaud, I am almost beside myself with joy. When I was young, I campaigned for Senator Robichaud. He may not remember. It was in the days of Jean Lesage. I see him smiling and nodding his head. I like to see him smile when I am speaking. You know that I helped you in 1960. I supported your efforts to have Acadians recognized. Recognizing someone never means taking someone else's rights away. Recognition is an affirmation of what we are.

On motion of Senator Prud'homme, debate adjourned.

NATIONAL COUNCIL OF WELFARE

REPORT ON PRESCHOOL CHILDREN—
INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry by Honourable Senator Cohen, calling the attention of the Senate to the report by the National Council on Welfare entitled: "Preschool Children: Promises to Keep"—(*Honourable Senator Pépin*).

Hon. Lucie Pépin: Honourable senators, I rise today to speak in support of Senator Cohen, who spoke to us on June 10, of the vital issues in the establishment of a national daycare system. I support her request, because I have been involved in this area since the early 1980s, when I was the Chair of the Canadian Advisory Council on the Status of Women. We organized the first national conference on daycare. Since then, I had the pleasure of sitting on a special committee of the House of Commons on child care, chaired by the Honourable Shirley Maheu. We submitted a very detailed report. Twelve years later, we are in the same position, beseeching the Government of Canada to do something for childcare services. I would like to congratulate the National Council of Welfare on its excellent report, which will help us review our priorities.

Senator Cohen drew our attention to the alarming situation in daycare for preschool children in Canada. She told us that a number of governments had promised to provide Canadian families with affordable and quality childcare services, but that not one had yet come up with the investment needed to start up such a program.

[*English*]

In 1989, the House of Commons adopted a unanimous resolution calling for the elimination of poverty for children by the year 2000. Since that time, successive provincial and federal governments have made significant cuts to education, employment, social and health services, all destined to help parents and their young children. The result, not surprisingly, has been an increase in childhood poverty from 14.5 per cent in 1989 to 20.9 per cent in 1996. Efforts by the federal government to create additional daycare spaces have failed. The reality is that those additional spaces are needed now more than ever before.

Despite the promises, the argument against publicly funded care for prechool age children is always one of dollars. "We cannot afford it," policy-makers say.

[*Translation*]

They keep saying the idea is a good one, but they simply lack the means to fund a public daycare system for preschool children.

I get the impression that, in a way, they tend to minimize the importance of early childhood experiences, just because children are involved. It is high time the situation is corrected and we realize that the experiences of our children today will shape our society tomorrow. It is as simple as that. We do not have the means not to invest in a daycare program for young children.

According to Dr. Fraser Mustard, the former president of the Canadian Institute for Advanced Research, a country that neglects its children neglects its future.

Child development specialists and experts on the functioning of the brain are continually expanding our knowledge on the scope and vital importance of learning between birth and the age of six. What is learned during this period establishes the bases for good motor development, social skills, language acquisition and cognitive abilities. It is during this period that children learn to reach out to the world with trust and curiosity.

Poverty plays a particularly insidious role in the development of young children. Children who are born and raised in poverty must overcome huge obstacles in order to later enjoy a stable personal and professional life. Poverty is linked to malnutrition, sickness, family stress, apathy, violence, negligence and lack of support services at the local level. In that context, many children simply do not manage to gain the social skills, education and adaptability that are required to succeed in school or, later, in the workplace. The seeds of failure are planted early on and keep growing throughout one's life.

Research studies confirm time and again that the first six years of a child are crucial to his or her ability to adequately function as an adult later on in life. Many of society's most serious problems have their roots in early childhood.

Problems such as violence, crime, psychological distress and dependence on social services are all due to a lack of education and skills. Statistics show that 71 per cent of children who have serious behavioural problems at age 6 become antisocial adults; that 45 per cent of offenders were slow readers in grade two; that as early as age 5 we can identify in boys the three factors related to juvenile delinquency and violence, namely hyperactivity, low anxiety and low response to reward; that 70 to 90 per cent of violent criminals were very aggressive children; that 75 per cent of those who are institutionalized suffered some form of abuse in their childhood; and that poor children are twice as likely to drop out of school.

Our society pays a very high price for the lack of investment in early childhood, both in terms of social spending and lost human potential. According to the Conference Board of Canada, high-school students who were going to graduate in 1987 but dropped out of school will cost society in excess of $1.7 billion in lost tax revenues.

What do researchers suggest? Accessible, affordable, quality daycare. The advantages of investing public money in quality daycare for preschoolers has been amply demonstrated.

The High School Perry Preschool Project in Michigan, which followed a group from infancy to the age of 27, is one of the most important studies in this regard.

This study showed that, when children who had participated in a quality preschool program reached adulthood, they earned more, had a higher level of instruction, were arrested less often, and needed fewer social services than children who had not taken part in such a program. These findings were included in a report by the Honourable Monique Bégin for the Government of Ontario in 1995.

In 1997, the federal Department of Human Resources Development sponsored a study showing that the skills children acquire before beginning school affect how well they will do at the secondary level and determine whether or not they will drop out. A child's readiness for school at the age of six plays a crucial role in his academic success at the elementary and secondary levels and in the workplace.

[*English*]

In a 1988 University of Toronto study, economists Cleveland and Krashinsky showed that a high-quality public childcare system for those children who are two to five years of age would return $2 for every dollar invested. The return covered all socio-economic groups, not just the disadvantaged. The projected return was calculated based on greater female participation in the workplace, lower school drop-out rates, higher earnings and greater tax revenues.

Honourable senators, what can we do? First, we must fully understand the process of human development from early childhood on and its linkages to later life. If the foundations for successful learning, coping and socializing are instilled by age six, we must support children and families during this crucial period. It is completely unreasonable to expect our social institutions to correct accumulated social disabilities later on. Yet that is exactly what we are asking them to do. We pass on to our schools and social institutions problems which they are not designed to address, problems which could have been minimized or prevented with early childhood intervention. By failing to intervene early on, we undermine the effectiveness of our whole social structure.

The focus must be on prevention because the research is telling us that this is the most cost-effective way to promote healthy human development. Prevention means giving the highest priority possible to supporting children during the earliest development period. It means creating a national, integrated, early childhood childcare and preschool education program. The quality of the childcare services offered will have a direct bearing on the ability of poor families to find and maintain employment from one generation to the next. This would seem a modest investment if it helps us combat poverty and produce a better educated, more productive and healthier labour force.

[*Translation*]

Child custody must be seen from the same angle as education. Each of these elements is of such importance for human development and, hence, for the prosperity of our country that our governments can no longer avoid assuming their responsibilities in this area.

Honourable senators, studies been carried out. We have the information. We must now act. In the interests of the present and future prosperity of our country, we have the obligation to guarantee a healthy, safe and stimulating childhood to all Canadians. The federal government and its provincial partners can no longer postpone the establishment of a national childcare system. I invite you to join me in demanding that the federal government keep the promise it made to Canadian children and become a leader in that area.

Since 1982, several people, like Senator Cohen and myself, have been working on this issue. After 19 years of research, we hope that the various levels of government will take hedd of the needs of our children and will finally act on this important issue.

Hon. Marcel Prud'homme: First of all I want to acknowledge that I did speak a bit loudly with one of my colleagues and I wish to apologize to Senator Pépin. She gave an excellent speech. I was a member in the other place with her from 1984 to 1988. She was responsible for this issue. Therefore, she has been interested in this issue for quite some time.

Senator Pépin asks us to join her. She is asking for our support. I am ready to help. Now, what should we do to get the government involved, since it will be dealing with this issue?

[*English*]

I see Senators DeWare and Gill. We are a diminishing group at quarter to five. I wanted to stay because I expected her to speak.

[*Translation*]

The honourable senator need only tell us what we could do to help, since this is what she is asking. For my part, I support her.

Senator Pépin: If I were mean I would tell the honourable senator that he should have listened because I already mentioned it: We must demand that the federal government and the provinces fulfil their promises in this respect. We need only put pressure on both the federal and provincial governments to get them to act in this area.

Senator Prud'homme: For the last week, I have let nothing pass. Honourable senators, I did listen. I can do more than one thing at a time. I listened carefully to everything the honourable senator said, including her call for silence. I am only responding to what she asked in the first part of her speech. If you need a good organizer to get things moving, I am your man. I do not see where we disagree.

Senator Pépin: We need leaders in this area. Senator Prud'homme is hired. It is important to do whatever it takes to get the message across to the federal government that it must act on this issue. For 19 years now parents have been asking for daycare, not only for preschoolers, but also for cultural minority children, poor children and handicapped children. We always get the same answer: there is no money. I believe it is very short-sighted not to invest in our future at this point. I urge you to bring pressure to bear.

The Hon. the Acting Speaker: The time provided for this item has expired.

Senator Prud'homme: Honourable senators, I see that everyone is wondering who will move the adjournment. I do not want to have the floor all the time, but I cannot let such an important debate end. I would be prepared to second Senator Losier-Cool if she were to move the adjournment of the debate.

On motion of Senator Losier-Cool, debate adjourned.

STATUS OF PALLIATIVE CARE

INQUIRY—DEBATE ADJOURNED

On the order:

> Resuming debate on the inquiry of the Honourable Senator Carstairs calling the attention of the Senate to thestatus of palliative care in Canada, in recognition of National Palliative Care Week.

Hon. Eymard G. Corbin: Honourable senators, before addressing this issue, I would like to apologize. The other day, I referred to this inquiry of Senator Carstairs as an inquiry on euthanasia, which obviously is not the case. This is an inquiry on palliative care that she made to mark National Palliative Care Week in Canada.

[*English*]

• (1650)

Palliative care is a unique mode of patient support developed to address the needs of persons who have been diagnosed with a terminal illness. It focuses primarily on the needs and comfort of the patient, but also caters to family members in a situation of emotional stress when hope for a cure is no longer possible.

Palliative care concerns itself with the total person, not simply the illness. Many patients experience uncontrolled physical and psychological suffering due to their illness including unmanageable pain, depression, anxiety and severe existential distress. In these seemingly desperate situations, family members and health care providers may be inclined to consider euthanasia or doctor-assisted suicide as an option. Some people would conclude that the best solution would be to bring on, to provoke, an early death and to spare the patient excruciating pain.

However, when patients themselves, their families and health care providers even consider euthanasia, it is usually in a desperate response to terrible suffering and fear of inadequately relieved pain. Many people do not know that there are ways of adequately dealing with the pain and psychological distress. Unlike euthanasia, palliative care focuses on life, what is left of it, and aims at controlling suffering and maximizing the quality of the patient's remaining weeks or months.

Palliative care is founded on highly developed clinical expertise in pain and symptom management; on timely, responsive and sensitive patient-centred communications; and on interdisciplinary teamwork. It is a highly specialized area of medicine which is continuing to advance.

Most people would abandon the thought of euthanasia if they were made aware of, and offered, real alternatives and services. If most individuals knew that the alternative to living in pain, distress and, yes, abandonment, was living relatively pain-free, comfortable, and surrounded by loved ones, they would support the cause of palliative care instead of euthanasia and doctor-assisted suicide.

As a member of the committee which studied these matters under Senator Joan Neiman, I am aware of the other side of the argument which favours euthanasia for the supposedly 5 per cent of terminal cases that cannot be medicated, as well as requests for assisted suicide in the circumstances. Therefore, I will not debate that aspect of it here and again. My concern is for the greater respect due to life, the greatest phenomenon in the universe, though I recognize that the debate on freedom of choice is far from ended.

Unfortunately, successive Canadian governments, federal as well as provincial, have failed to ensure exemplary funding and support for palliative care programs during the recent downsizing and restructuring processes in the health care system right across Canada. While the restructuring may have been necessary, palliative care beds in hospitals were, in many instances, the first ones to be trashed. Some might argue that palliative care was the most vulnerable and yet the hardest hit.

I will of course utter a word of caution: I do not have the facts and figures to prove what I advance, but I have heard a number of reports, as have some of you, that would indicate that this indeed was the case. Many care units in hospitals have experienced cut-backs, downsizing, lay-offs, bed closures and staff bumping. It is to be hoped that that exercise is now behind us.

The time has finally come to deal with the proper care of terminally ill people. Palliative care is still not a priority in many areas of the country, indeed, in many jurisdictions. This is worrisome, considering Canada's ageing population is expected to lead to a significant increase in lengthy terminal illness cases as a result of cancer, Alzheimer's disease, respiratory and many other chronic terminal illnesses.

In 1989, 2.9 million Canadians were over the age of 65. By the year 2011, this number will have increased to 5 million. The longevity span is constantly increasing, and with it, debilitating terminal illnesses. Our current health care system is not well equipped nor sufficiently funded to accommodate this growth and the number of people with terminal illnesses. In my opinion, we could be doing more for the health care support staff currently, including nurses who do the back-breaking chores of assisting the dying.

Many studies are showing that Canada's health care system is failing to meet the needs of the dying, and that many patients are experiencing needless anguish and suffering. Although we are aware that even simple initiatives in palliative care can help lessen the unnecessary and unacceptable burden of pain and suffering, our governments generally have not dedicated enough time and money to this cause. It is to be hoped that they are now awakening to reality. Surely nothing comes home to roost with more personal impact than the thought in the minds of our politicians and bureaucrats that they, too, could become palliative care cases in a few years. Death, after all, is our common lot.

Palliative care is still on the back burner in many medical schools. Medical students are offered very little time to learn the full scope of pain control and pain management or, to put it another way, because there are also rare exceptions, medical faculties could modify the curricula to address these contemporary challenges.

Why would we still be sending new doctors out to practise who do not know how to properly make terminally ill patients comfortable and relatively pain-free? We have all come to appreciate the growing importance of palliative care. We know why it is required. We know what needs to be done to ensure that palliative care programs reach their full potential.

I understand that palliative care requires further research. I also believe that palliative care needs much stronger government support in order to improve and expand in all communities across Canada. Compared to other jurisdictions, Canada is lagging behind. For example, France recently introduced a law which aims to guarantee the right to access palliative care. Our country does not, under the health act, consider palliative care an essential service. However, if we, too, were to introduce similar legislation, our health care delivery system is unfortunately not sufficiently prepared, in terms of persons, facilities and budgets, to accommodate the growing number of people with terminal illnesses and their entitlement to quality care. It is up to us, the governments and legislators, to help them prepare.

In my opinion, there has been sufficient talk about the need for palliative care. While I fully recognize the admirable pioneering initiatives of many individual and community efforts, much more remains to be done. Now is the time for action.

Before I conclude, honourable senators, I thank Sarah Wells, one of the pages in the Senate, who helped me in my work of research and drafting of these remarks. She liked the work and welcomed the opportunity to learn more about palliative care and related problems.

On motion of Senator DeWare, debate adjourned.

[*Translation*]

DEVELOPING COUNTRIES

STATUS OF EDUCATION AND HEALTH IN YOUNG GIRLS AND WOMEN—INQUIRY

On the order:

> Resuming debate on the inquiry of the Honourable Senator Losier-Cool, calling the attention of the Senate to population, education and health, particularly for young girls and women in many developing countries.

The Hon. the Acting Speaker: Honorable senators, I must advise you that if the Honourable Senator Losier-Cool speaks now, her speech will conclude debate on this inquiry.

Hon. Rose-Marie Losier-Cool: Honourable senators, first I want to thank the Honourable Senators Andreychuk, Pépin, Callbeck, Wilson and Corbin for their comments on this issue.

When I launched this debate, I limited my comments to the education of young girls and the reproductive health of women in French Africa. I am glad that my honourable colleagues addressed many aspects of the status of women in developing countries.

Senator Andreychuk raised the matter of maternity and mortality. She described the situation of women at the moment in South Asia, where their inferior status means that pregnancy is now a major cause of death. These striking statistics underscore the need to improve sex education and family planning resources throughout the world in developing countries.

Honourable Senator Pépin clearly outlined the links between the protection of individual rights, the victory over AIDS and improvements in the health and education of women in developing countries.

I should like to take this opportunity to draw your attention to a few examples of the individual rights she listed as rights that must urgently be recognized and protected in order to improve the health of women.

First, Senator Pépin mentioned the right to research, receive and transmit information on the prevention and treatment of HIV. When we consider the stunning statistics on mortality in connection with HIV and AIDS throughout the developing world, it is very clear that this matter must become an important priority.

In pointing to the themes of the 1994 Cairo Conference, Senator Wilson put what amounts to a major challenge to governments and international agencies with respect to the health and education of women and young girls in developing countries.

At the Cairo conference in 1994, the international community finally put the emphasis on human rights rather than on the reduction of the world's population. They focussed on health as it relates to the reproductive process, strengthening of women's autonomy and sustainable development. One of the main themes addressed in Cairo was that the measure of the well being of a given country is related to the status of its young girls.

Honourable senators, in taking this view, the international community recognized that the improvement of the welfare of a society's most vulnerable members represents social progress. The international community said women were entitled to self-determination, education and full health and family planning services. In 1994, the Cairo conference adopted powerful strategies to improve the situation of young women and girls in developing countries. However, these strategies have yet to have a solid impact on most of the countries concerned.

What caused this failure? There is a lack of support on the part of signatory governments. For example, in 1994, Canada made the commitment to spend $200 million a year to meet the objectives set at the Cairo conference. However, in 1998, our contribution was only a quarter of that amount. This is where we see the disparity between the goodwill of the international community and the economic reality of independent states. This disparity does not exist only in Canada, but in all G-8 countries.

However, in spite of the fact that Canada has not met the objectives set at the Cairo conference, it can be proud of its contribution to the status of women in developing countries. Senator Callbeck pointed out in her remarks that the Canadian International Development Agency makes a sizeable contribution to health and education programs for girls and young women. At least we can be proud that the principles set out in Cairo are part of our development agency's policy.

As mentioned by Senator Corbin, we can also be proud of the success achieved by Canada in supporting the movement against female circumcision. According to Senator Corbin, the elimination of this practice remains a priority for CIDA.

Honourable senators, let us have a look at the impact the education of girls and young women can have on the practice of female circumcision.

For example, in sub-Saharan Africa, between 15 and 20 per cent of the growth in HIV infection is related to female circumcision. This practice would certainly be questioned if people were better informed about its harmful effects.

Honourable senators, we heard a lot of statistics and stunning facts during the course of this debate. It should be pointed out that all those senators who took part in the debate stressed the importance of education, which was the key element of my inquiry.

[*English*]

Honourable senators, Canada is helping people living in developing nations to have access to food, water, education, and primary health care. There are clear links between levels of education and the number of children a woman in a developing country will have. In fact, after access to family planning services, a woman's education is the most important factor in determining family size.

A woman's level of education also determines, to a large extent, her own health and that of her family. In countries where access to health care is limited, each additional year of schooling is associated with a 5 to 10 per cent decline in child deaths.

[*Translation*]

The status of women in developing countries is still problematical, and it will not improve unless the international community commits itself more concretely to the monetary objectives set out in the Cairo convention.

[*English*]

The five-year review of the 1994 International Conference on Population and Development, called the ICPD + 5, is to be held this summer. It will culminate in a special session of the United Nations General Assembly in New York from June 30 to July 2. The Canadian Association of Parliamentarians on Population and Development, of which I am co-chair, will be represented at that conference.

[*Translation*]

To conclude, honourable senators, our goals concerning the Cairo conference have already been set, and we should now remind the government that it is very important that they be reached.

The Hon. the Speaker: Honourable senators, if no other senator wishes to take part in this debate, the inquiry is considered debated.

[*English*]

HEALTH CARE IN CANADA

INQUIRY—DEBATE CONTINUED)

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Keon calling the attention of the Senate to the present state of the Canadian health care system.—(*Honourable Senator DeWare*)

Hon. Mabel M. DeWare: Honourable senators, I wish to commend Senator Keon for introducing debate in this chamber on such an important and timely subject. Canada's health care system is relevant to each and every one of us, whether young or old, rich or poor, male or female, and regardless of language or ethnic origin. In fact, I can think of nothing that pervades our national life to the extent that our health care system does.

• (1710)

Our health care system is something that many Canadians feel sets us apart from our neighbours to the south, and is a reflection of how we view our society: caring, compassionate, founded on equality. It is an important factor in our productivity relative to other nations.

Above all, whether we are in good health or poor health, the Canadian health care system provides us with a crucial sense of security. We have long been able to count on our health care system to provide us with the services we need, when we need them, without driving people into personal bankruptcy. That security is a key part of the quality of life that we enjoy collectively, as Canadians. There is also the quality of life that it ensures for countless individuals. Indeed, for many, it can mean the difference between simply surviving and having a meaningful existence. For others, it can be a matter of life and death.

Honourable senators, as I mentioned, we have been able to count on Canada's health care system to be there for us and our loved ones when we are in need. However, that security is being threatened. Canadians in all provinces are worried, including patients and their families, health care professionals, and hospital administrators. It is time for politicians to start worrying, too. Action is needed now to ensure that we will be able to count on our health care system in the future.

We are fortunate to have among our colleagues a man who is a leading force in medicine. Not only has Senator Keon helped save lives many times, he has also helped build Canada's international reputation for excellence in this field. Apart from his expertise as a world renowned heart surgeon, he is also in touch with the needs and interests of Canadians when it comes to the health care system, upon which we all rely.

Senator Keon has a global perspective and, may I say, a very human perspective. Just as he sees the whole person when he treats a patient, he sees the whole system when he treats people within that system. We, as legislators, must also do the same.

It is clear from his speech on April 20, that Senator Keon put a great deal of thought into his observations on the current state of the Canadian health care system, and his conclusions about the future direction that the system must take. I am certain that we all agree with the objective of his inquiry, which is, as he stated:

> ...to lay the groundwork for a clear, sustained focus on health care reform.

Since we all know that something needs to be done, there is an abundance of anecdotal evidence. Almost everyone has family members, friends or acquaintances who have been let down by the health care system. The recent general elections, in Ontario and in my home province of New Brunswick, put the spotlight on health care and how the system is not working as well as it should.

Honourable senators, before I add my own observations to the substance of Senator Keon's inquiry, I should like to make a general comment. While I join him in commending the government for its recently announced health care measures, I must also point out that at least some of the problems that the health care system is experiencing are a direct result of the cuts made by the government to the funding it gives to the provinces for health care.

Under the former Progressive Conservative government, cash transfers for health, education, and social assistance climbed from $12.6 billion to $18.89 billion per year. The Liberals cut $6 billion from that total. Even after some of the funds are restored in 2003, the Liberals will be spending only $15 billion a year. That is still $3.8 billion less than when the Progressive Conservative government was elected, and that does not include inflation. To appreciate how this translates at the provincial level, let us look at New Brunswick. In my province, transfers will be 27.8 per cent less in 2003 than they were in 1993. That is a loss of $142 million.

As you will recall, Senator Keon, after eloquently describing the constraints currently facing the health care system, introduced an eight-point strategy which he hopes will serve, he stated:

> ...as a starting point for initiating an inquiry into the health care system.

Like the rest of us, Senator Keon certainly does not have all the answers. However, I believe he has helped point us in the right direction. In order to refresh our memories, the eight points of his strategy are: the need for a vision; the development of a long-term planning and policy agenda; public support of the need for change; focus on systems integration; consideration of the role of the private and voluntary sectors; stronger partnerships between the private and public sectors; a linkage between social and economic policy agendas; and to illustrate strong federal leadership.

Honourable senators, time does not permit me to do justice to all of the points set out in Senator Keon's strategy. Therefore, I should like to speak mostly about the first point, the need for a vision, because I believe you will agree that that is the point from which all the others flow. Then I shall use my province, New Brunswick, as an example to illustrate the results that a lack of vision can have. Finally, I will say a few words about the leadership which we can provide at the federal level in terms of the second point, which involves the development of a long-term planning and policy agenda.

I feel that the need for a vision is the most important point of Senator Keon's eight points, because a vision is the foundation of where we are headed with the health care system. A vision provides the blueprint for future change and progress. Just like building a house, if you do not have a plan then it is anyone's guess as to how the structure will look when it is completed.

I am reminded of the title of a career planning book with which I became familiar during a tenure as Minister of Advanced Education and Training in New Brunswick. It was called: "If you don't know where you're going, you'll probably end up somewhere else." Just as job seekers must prepare themselves for the labour force, we also must figure out where we are going with the health care system. We must know what we want in health care. We must know what the system should look like. We must know where we are going. We must know how all the components of the system will work together, and we must have a reason and a plan for every decision that is made. In other words, all of our actions must be part of an integrated whole, just as our health care system should be fully integrated with the needs of all Canadians.

Honourable senators, when you have a vision, you have a basis from which to work. When you plan a program to modify funding arrangements, you are doing that because it helps you work towards the vision and not, as has recently been the case, because you simply want to cut costs. As a result, when the decisions are made, they will contribute towards building a system. When changes are brought in, they will help move the system forward so that everyone involved can benefit, because to have a vision means to be building towards something, and it gives a focus to all decisions that must be made. It does not mean simply trying to manage to get by day-to-day. It is not about crisis management.

Unfortunately, however, Canadians are becoming increasingly concerned that our health care system is verging on a crisis. The decisions are being made based only on the bottom line, and not for the health care needs of Canadian men, women and children.

Honourable senators, let us consider for a moment what happens when you do not have a vision. A lack of a vision, I believe, has created many of the problems that plague our health care system today, in whatever province you live. Not having a vision means drifting from one crisis to the next. It means cutting one program and having greatly increased costs show up in another program. Yet this is precisely the situation which the federal cuts, under the current Liberal government, have led to in many provinces.

Rather than being able to review health care delivery in terms of current and emerging needs, the provinces have found it necessary to scramble for ways to simply cut costs. That is not to say that there was not savings to be had in some of those areas, and I believe we all agree with that. However, when you are in a crisis mode, you risk compromising the integrity of the entire system. We all know that it is not enough to cut services and just keep your fingers crossed and hope that people will not get sick.

The consequences of a lack of vision can be nothing short of disastrous. Lack of vision leads to bottom line decision making, lack of planning, poor management of human, technological, and financial resources, and lack of input from patients, health care providers, and communities. Above all, lack of vision can result in governments avoiding their responsibility to ensure that health care needs are being properly met. These are all situations that Senator Keon's eight-point strategy, which is built upon developing a vision, aims to avoid.

Honourable senators, New Brunswick is a case in point. Health care was an issue in the recent provincial election, and it became an issue precisely because of those kinds of problems. For example, New Brunswickers, in particular those in rural areas, were facing severe doctor shortages thanks to the Physician Allocation Program. The idea seemed to be that more doctors drive up Medicare costs. Therefore, reducing the number of doctors would reduce the costs. The assumption appeared to be that people will get sicker, as necessary, to keep all physicians at the top of their billing. We are not just talking about family doctors. The number of specialists was also restricted, thereby increasing delays for patients with serious conditions to be treated. Honourable senators, this is an important example of bottom-line decision-making and its negative effects on Canadians.

• (1720)

Another example in New Brunswick involves the prescription drug program. Again, cost, not its medical utility, seems to be the main factor in determining whether the government will fund a particular drug. Patients who need drug therapy for multiple sclerosis, hepatitis C, cancer, kidney transplant rejection and environmental illness had been living a real nightmare, and there are probably others.

Another example of crisis-driven management is the alarming reduction in the number of beds available in New Brunswick health care facilities. The number of beds is not necessarily a measure of the health care provided; however, inadequate services were often substituted in their place. This has resulted in early release, inadequate home care and long waits for surgery. In addition to the lack of beds and lack of specialists, facilities and equipment has also contributed to longer waiting lists for medical diagnosis and treatment. This has led to deterioration of health and increased remedial medical expenses.

Honourable senators, I should like to share with you one last example of the health care situation in New Brunswick that probably applies as well to all your provinces, namely, the situation of our aging population. It is something that all provinces will have to deal with seriously in the not-too-distant future. In the case of New Brunswick, this is compounded by the fact that many of our young people are leaving the province. Therefore, our medical needs are changing and they need to be addressed. Rather than waiting for the crisis to hit, we should start planning ahead. The type of medical care needed, the facilities and the medications all need to be considered, as well as the financing. I am confident that the new provincial government will address this important matter. However, it could do so much more effectively — as could all the other provinces — if the federal government became an active partner in the renewal of our health care system.

This brings me to the final point that I wish to make today, namely, the role of Ottawa in ensuring the future of Canada's health care system. I should like to say that I concur with remarks made by our colleague the Honourable Senator Norman Atkins. When speaking to this inquiry on May 4, he reminded us that, while health care lies within the provincial jurisdiction, the federal government has an important role in the funding of health care. As well, the Canada Health Act provides the basis for much needed leadership in this critical area.

Not only can the federal government take a leading role with the provinces, health care providers, and others involved in the health field in developing a common vision of how we want the system to work in the future, but by working together they can also develop the planning and policy agenda needed to implement the vision that is set out in the second point of Senator Keon's strategy. Perhaps more important, action must be taken to ensure that the federal government will never again leave the provinces — not to mention providers and patients — holding the bag when it decides to download costs so that the books look better.

I urge all honourable senators to become involved in the ongoing debate on the future of Canada's health care system, whether in this chamber or elsewhere.

On motion of Senator Carstairs, debate adjourned.

CAPE BRETON DEVELOPMENT CORPORATION

MOTION FOR PRODUCTION OF DOCUMENTS RELEVANT TO PROPOSED PRIVATIZATION—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Atkins:
>
> That there be laid before this House all documents and records concerning the possible privatization of DEVCO, including:

(*a*) studies, analyses, reports and other policy initiatives prepared by or for the government;

(*b*) documents and records that disclose all consultants who have worked on the subject and the terms of reference of the contract for each, its value and whether or not it was tendered;

(*c*) briefing materials for Ministers, their officials, advisors, consultants and others;

(*d*) minutes of departmental, inter-departmental and other meetings; and

(*e*) exchanges between the Department of Natural Resources, the Department of Finance, the Treasury Board, the Privy Council Office and the Office of the Leader of the Government in the Senate.—(*Honourable Senator Murray, P.C.*)

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, this motion has reached the fifteenth day. Therefore, I should like to make a few remarks on this item and return to it later, given the time of the day.

It was on February 11 that Senator Murray moved that there be laid before the house all documents and records concerning the possible privatization of DEVCO. Hansard for February 11 gives the details of that motion. Senator Graham then spoke. If you go to Hansard for April 20, 1999, you will see Senator Graham's remarks. It is in regard to a few points in Senator Graham's remarks that I want to participate in this debate.

In effect, I remind honourable senators that, in attempting to secure this information concerning DEVCO, Senator Murray took a dual route. On the one hand, he was seeking information pursuant to the Access to Information Act;on the other hand, he was taking the route of a motion for a house order for the production of documents. Senator Graham had not raised questions about the first avenue but did raise questions about the second avenue.

Let us reflect for a moment on the adequacy of members of Parliament, whether of this place or the other House, relying on access to information to study a matter of public interest.

I wish to draw your attention to an interesting book by Donald J Savoie entitled, *Governing from the Centre*, which was published just a few days ago. In his book, Professor Savoie talks about access to information and some of the problems that are associated with it. For example, on page 290, Professor Savoie writes:

> ...government officials in both central agencies and line departments report that Access to Information legislation has made them reluctant to commit their views and their recommendations to paper.

The thesis of his book is that power has gone to the centre. This is the same book where we had the famous line that cabinet no longer is what it used to be but now serves in the role of a focus group. On this particular issue, namely, that if the shift of administrative power has gone to the centre and if access to government information is being thwarted because public servants have learned that it is not such a good idea to commit everything to writing, while that may be a cute strategic move on the part of public servants it is not a cute strategic move in terms of the need to have public information if parliamentarians are to meet their duty.

There are problems with us having to rely on access to information because perhaps access to information itself is being subverted by public administrators not using more of the oral tradition. That is why it is important for witness to attend before our committees and other bodies, namely, because we can ask questions and examine the witnesses. Things that otherwise are hidden from us by virtue of the technique of not committing it to writing can be addressed by asking the officials personally what is happening.

• (1730)

In regard to the other avenue of our committees being able to ask that certain documents be tabled, that is a right and a methodology that parliamentarians in both houses should guard with a degree of jealousy.

Senator Graham has pointed out problems that have occurred in some of our committees, such as the Pearson committee, in regard to the relationship between the executive and Parliament, and the production of documents. We also saw that difficulty in regard to the matter of the rBST issue a few weeks ago.

I agree with Senator Graham that there are problems. He drew our attention to references in Beauchesne on this subject. I was reading some observations of Erskine May in the 22nd edition of his work on the presentation of papers. I shall not delve into that subject at this time. I find the issues that have been raised so far in the debate on this motion very interesting. I should like to pursue them further.

Hon. John G. Bryden: Honourable senators, is it possible to ask a question?

Senator Kinsella: Certainly.

Senator Bryden: The honourable senator referred to a book written by Donald Savoie, from which he quoted a phrase, "cabinet as a focus group." Is that the same book and the same Mr. Savoie who has characterizations of other institutions, such as the Senate of Canada? Could the honourable senator indicate Mr. Savoie's level of appreciation of our institution?

Senator Kinsella: The book is entitled *Governing from the Centre: The Concentration of Power in Canadian Politics*. The author is Donald J. Savoie. The University of Toronto Press published the book. The date of publication is 1999.

On the subject of Parliament, there are several sections. My reading of this book is that Mr. Savoie is concerned that accountability has become more difficult for parliamentarians, and that the role of the checks and balance mechanisms that have been traditionally part of our system, including the traditional role of cabinet, have in recent years become less important.

On page 260, Mr. Savoie quotes "a Chrétien Cabinet minister" as saying:

> Cabinet is not a decision-making body. Rather, it is a kind of focus group for the prime minister.

I read that line in a few newspaper articles when the book was published.

Senator Bryden: Honourable senators, perhaps Senator Kinsella would answer the question I asked: Does Mr. Savoie also refer to the Senate in his book?

It is my understanding from hearing Mr. Savoie speak about his book that his opinions are not particularly complimentary in regard to the Senate, in that the system could get along very well without us. That is not intended to be a quote.

I wonder if honourable senators would give the same amount of credibility to Mr. Savoie's position in relation to our institution as Senator Kinsella is asking us to give to the author's comments in relation to cabinet having become nothing but a focus group.

Senator Kinsella: Mr. Savoie does refer to the Senate in his book. On pages 263 and 264, he speaks of appointments to the Senate. On page 77, 107 and 108, the reference is to the Australian Senate. Ministerial appointments in the Senate are spoken of on pages 82 and 83. The role of the Senate is addressed on page 48. On page 48, there may be reference to what Senator Bryden is referring to.

My assessment of the book is that it was an interesting thesis. I would not attempt to provide a précis as to his view on the Senate.

Senator Bryden: One last question, if I may. I believe that this is the same Professor Savoie who has a series of books and studies in relation to analysis of the Atlantic region and its economy. As a matter of fact, one might say that Mr. Savoie, in some ways, has made a career out of analyzing our hardships.

I am not sure, but the reason I raise Mr. Savoie's concerns about our institution is that I believe it is the same Mr. Savoie who is alleged to have wanted to join us in our institution. From time to time, he has referred to our institution as "Heaven."

Senator Kinsella: I would respond by saying that Mr. Savoie comes from the mountain region of New Brunswick, which is the general area of origin of several of our colleagues, including Senator Bryden.

It is my hope and expectation that we have a great deal of work to be done together here, and there will be no opening for a Senate seat in that region.

However, if what I read in one of the news reports was correct, I understand that Mr. Savoie was a middle-level Liberal advisor.

Hon. John B. Stewart: Senator Kinsella referred to this concentration of power as having taken place in recent years. I heard that said as having happened under the Trudeau government. I heard it said again with regard to the Mulroney government. I hear it said with regard to the Chrétien government. Is the honourable senator including all those three governments in this description?

I see heads nodding, but that is not on the record.

Senator Kinsella: For the record, it is Mr. Savoie's explicit thesis that that process began with the Trudeau era.

Senator Stewart: Does Mr. Savoie take into account the fact that, in the Pearson period, the government of that day was a minority government? Does he attribute the origin of this concentration of power to our return to a majority government?

• (1740)

The implication is that we would be much better off after the next general election if we had a minority government, let us say a minority Reform government. Is that the position?

Senator Kinsella: Honourable senators, I am not sure whether that is his thesis or not. It certainly would not be mine.

[*Translation*]

Hon. Jean-Maurice Simard: I would like to ask this question to Senator Kinsella: Was Professor Donald Savoie one of the co-authors of the red book, back in 1993?

Senator Kinsella: The only thing I know is that Professor Savoie is a distinguished faculty member of the University of Moncton who is interested in the economic development of our region, and is involved in several national programs as a consultant.

Senator Simard: I would like Senator Kinsella to confirm publicly that Donald Savoie, a professor at the University of Moncton, was one of the co-authors of the Liberal Party's Red Book in 1993.

Senator Kinsella: I would not be saying too much by saying that it is not unlikely that he will someday sit in the Senate, judging by the tradition.

On motion of Senator Kinsella, debate adjourned.

SEXUAL ASSAULT

RECENT DECISION OF SUPREME COURT OF CANADA — INQUIRY—ORDER STANDS

On the Order:

Resuming debate on the inquiry of the Honourable Senator Cools calling the attention of the Senate:

(*a*) to the judgment of the Supreme Court of Canada in the sexual assault case *Her Majesty the Queen v. Steve Brian Ewanchuk*, delivered February 25, 1999, which judgment reversed the Alberta Court of Appeal's judgment upholding the trial court's acquittal;

(*b*) to the intervenors in this case, being the Attorney General of Canada, Women's Legal Education and Action Fund, Disabled Women's Network Canada and Sexual Assault Centre of Edmonton;

(*c*) to the Supreme Court of Canada's substitution of a conviction for the acquittals of two Alberta courts;

(*d*) to the lengthy concurring reasons for judgment by Supreme Court of Canada Madame Justice Claire L'Heureux-Dubé, which reasons condemn the decision-making of Mr. Justice John Wesley McClung of the Alberta Court of Appeal and the decision of the majority of the Alberta Court of Appeal;

(*e*) to Mr. Justice John Wesley McClung's letter published in the *National Post* on February 26, 1999, reacting to Madame Justice L'Heureux-Dube's statements about him contained in her concurring reasons for judgement;

(*f*) to the nationwide, extensive commentary and public discussion on the matter; and

(*g*) to the issues of judicial activism and judicial independence in Canada today.—(*Honourable Senator Nolin*)

Hon. Shirley Maheu: Honourable senators, this inquiry has been on the Order Paper for quite some time. In view the comments made on this issue and of the request made by the Sexual Assault Centre of Edmonton, I wish to review the comments made by Madam Justice Claire L'Heureux-Dubé. I would also like to make my own, which are not necessarily in agreement with those of Senator Cools. I would therefore like the order to stand in my name.

Order stands.

The Senate adjourned until tomorrow, at 2 p.m.

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