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OFFICIAL REPORT
(HANSARD)

Tuesday, December 14, 1999

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Tuesday, December 14, 1999

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

Prayers.

THE LATE HONOURABLE R. JAMES BALFOUR, Q.C.

TRIBUTES

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, only last week I spoke with our dear colleague Jim Balfour whose death on Sunday night has saddened us all. He was, as he had been during his entire life — a life marked by more than one personal tragedy — stoic, forceful and, in particular, optimistic. He died after a long illness, one that involved difficult and painful treatments, yet his will to live never faltered. At no time did I hear him complain or even show signs of discouragement, even when he knew that all medical interventions had been exhausted.

Others can speak more knowledgeably of his laudable career than I, his career both private and public. What struck me about him are the personal characteristics that made him such a fine colleague and a friend. Loyal, devoted and committed, he was always available when his vote was needed, no matter what pressing personal obligation might be disrupted, and always regretful when illness prevented him from attending to Senate business. How many times was he told that his health came first and how many times did he not listen?

Only last year, during a period of remission when his cancer seemed to have been beaten, he agreed with tremendous enthusiasm to assume the responsibility of chairing the Veterans Affairs Subcommittee upon the retirement of Senator Phillips. He believed that in that role he could help to improve the conditions of those who had served their country. He always regretted that fate intervened so brutally.

In caucus, as in this chamber and in committee, his interventions were always listened to with great attention, as his wisdom and logic allowed any discussion and debate to take on a special significance. To be wise is to have experience and knowledge and to judicially apply them. So did Jim, whether in Parliament as a distinguished member or in his home as a kind friend. There may be some consolation in the fact that the grief felt today is shared by some, but it does not reduce the immensity of our loss. To his family, I offer my heartfelt sympathy.

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I mourn with other colleagues the loss of Senator Jim Balfour. Senator Balfour was a friend of mine, as he was of many of you. I got to know him best when we served together on the Standing Senate Committee on Energy, the Environment and Natural Resources. For many of the years that I was chair of the committee, he was the deputy chair. I came to appreciate Jim Balfour and the incredible life experience he brought to this chamber from his work as a lawyer, a businessman, a member of Parliament and as an honourable senator. By virtue of that life experience, he could get to the heart of a problem and make an enormous contribution to the good governance of Canada through the Senate.

I did not serve with Senator Balfour in this capacity, but I did observe him in his role as chair of the subcommittee looking into issues of national defence, particularly regarding Canada's peacekeeping role in the world. In 1993, the committee he chaired tabled a report in this place that was absolutely prescient. He identified issues that, had they been addressed then, would have avoided many of the problems our peacekeeping efforts have encountered in recent years.

Senator Balfour loved his family. I know that from my friendship with him and from our many discussions during the illness of his wife and during important family events, including some tragic ones. We will miss Senator Balfour, his common sense and his vigour. I join with honourable senators in extending my deepest sympathy to his family.

Hon. Lowell Murray: Honourable senators, Jim Balfour and I had been friends for 38 years. We came to the Senate on the same day 20 years ago this fall. He was my seatmate. To reflect on his life and death is something of a meditation on courage and forbearance.

In 1958, at the age of 30, Jim Balfour lost his only brother to a long and painful illness. In 1990, Jim and his wife, Jane, lost their youngest son tragically. In 1994, Jane died after a prolonged and debilitating illness. In 1996, Jim received from his physicians his own deadly prognosis.

His was a gifted and successful, if much afflicted, family. His father was a member of the Supreme Court of Saskatchewan. Jim carried on in the Regina law firm that bore the Balfour name. He became a businessman and corporate director. He was a generous volunteer and then went into public life. He served seven years in the House of Commons and 20 years in the Senate.

Far from being self-absorbed and never, ever self-pitying, his attention to the very end was on his duty and his interests. To the inquiries of his friends about his health he was completely candid and realistic. Then he would turn the conversation to the issues that occupied his mind and his time. In one such conversation

I had with him recently, it was the state of Canada's military reserves, the anger in rural Saskatchewan, the war museum in Ottawa and, of course, the prospects of the federal Tory Party. He bore all his troubles casually, all his responsibilities seriously and with exemplary integrity. A truly honourable gentleman, the example of his life and death is a proud legacy to his family, friends and colleagues.

Hon. A. Raynell Andreychuk: Honourable senators, I wish to add my condolences to the family of Senator Balfour.

When I arrived in Regina in 1976 to take up my position on the bench, I had already known of the Balfour family. One cannot walk the streets of Regina and not run into some landmark where that family has added its name and mark. I learned about Senator Balfour indirectly from the good works that had been left by him. He was not a man who stood up and claimed personal account for his achievements. Rather, he was more the man in the background who took pride in the issues that were important to him.

In the profession, Jim Balfour had a quiet manner. He was always well prepared. He was well reasoned and well respected in the Saskatchewan Bar. Younger lawyers who had difficulties could go to him quietly and he would certainly make time for them; that is not always the case in our profession. He would not only tell them how to handle the case but he would explain the importance of looking at the broader issues, the deeper issues and the moral issues in any case before the court. He had a respect for the law that was not equalled by many in the province.

Senator Balfour was also known for his political deeds in Saskatchewan. Having met him, I wondered how he could have gone door to door because he certainly did not have the personality and the exuberance one often associates with politicians. Yet, as I got to know Regina, a city which was not my home, I realized that his quiet concern for virtually every issue was important to the people of his city and his province. He would find a way to make known his views on an issue and seek a solution that would be of benefit to the community. I do not think there was an issue on which he did not have a quiet hand. He would not take the presidency or the most public position, but always he would be in the backroom giving advice. He gave the kind of leadership that marks someone as a statesman and not just a politician. With him, the two were synonymous.

Senator Balfour was very influential in the city of Regina. Working in a smaller community can be difficult when great funds are needed and great issues must be tackled. His quiet hand, again, was on many of the community's services. Therefore, he touched a broader community — those who normally would not have been associated with Senator Balfour and who would not have been known here. Those of us from Regina can go to many of the community services and talk to the people and find that somewhere, again in a backroom, Senator Balfour had his hand in making the world of the average citizen in Regina a little better.

Senator Balfour will be missed but his good works will live on. Many in Regina knew of his illness and privately hoped that he would overcome it one more time. However, the signal to many of us was when he went to his family and started documenting their history in Saskatchewan — again in a quiet and charming way. We knew this was not the man who always seemed to look to the future, and many of his friends realized he was preparing for the inevitable.

Honourable senators, Jim Balfour will be remembered, and I hope his family will find some consolation in the works he has left behind.

Hon. David Tkachuk: Honourable senators, I rise, too, on hearing of the death of Jim Balfour. A few things always happen upon being appointed to the Senate. One is that you get to meet people whom you have heard about, and Jim Balfour was one of those people.

• (1420)

Jim did something that was a real political accomplishment in Saskatchewan — he won a seat for the Conservative Party in Regina. For those honourable senators who do not know Regina, John Diefenbaker was asked by his campaign manager during the campaign of 1958 what should be done in the campaign in Regina, and he said, "Drop a bomb on it." It is known to us in the political business as "Red Square." Every left winger in Saskatchewan is gathered in Regina. Jim Balfour did something that few Conservatives have been able to do. I believe that when the people of Regina gave him a victory in that election, they showed what they thought of Jim Balfour. I believe that victory brought him to the attention of Mr. Clark, who appointed him to the Senate in 1979.

I did not know Jim that well, although I had heard of him. One of the good things that happened to me was that I was able to get to know him better while I served in the caucus with him. I admired his integrity and his honesty.

Honourable senators, I will reveal something about the caucus that I have attended for six years, and that is Jim Balfour's ability to cut to the chase. He was a man of few words, but he was always on the mark and his advice was highly respected by all of us. I will miss that advice.

On behalf of my family and on behalf of the city from which I come, I can say that Jim did a lot for our province. He was always on the right side of the issues, and we will miss him. To his family, I extend our deepest condolences and sympathy.

The Hon. the Speaker: Honourable senators, I ask you to rise and join me in a moment of silence, in memory of our departed colleague and friend the Honourable Senator James Balfour.

Honourable senators then stood in silent tribute.

SENATORS' STATEMENTS

MANITOBA

CROSS LAKE FIRST NATION—HIGH RATE OF SUICIDE

Hon. Sharon Carstairs: Honourable senators, I should like to bring to the attention of the Senate a tragic condition in existence in Cross Lake First Nation, a reserve located in northern Manitoba, south of Thompson.

Honourable senators, in the last five months, seven residents in a community of 4,000 have taken their own lives. In addition, 100 other residents have attempted suicide in this five-month period. These statistics are horrendous and cannot be ignored.

This story has additional alarming aspects. Normally, initiatives directed against suicides in communities are directed toward young men because they have always been the principal group in danger of suicide. However, at Cross Lake First Nation, the majority of the people attempting suicide have been between the ages of 20 and 30 and of both genders.

The youngest attempt in the last several months was by a nine year old. It is hard for me to judge the despair that would encompass a nine-year-old such that he would put a gun to his head. It is also hard to imagine that despair in a 59-year-old grandmother.

Honourable senators, this crisis must be addressed. At the end of September, a 24-hour crisis line was established. I can only assume that this crisis line has been effective in keeping the numbers higher on the attempted suicide side rather than on the successful side. However, that funding of $15,000 runs out soon. Clearly, we must ensure that additional funding is provided in order that this crisis line remains in effect.

Far more important, honourable senators, we must address the systemic problems in this community leading to these horrendous results.

NEW BRUNSWICK

BILL TO CREATE HOLOCAUST MEMORIAL DAY

Hon. Erminie J. Cohen: Honourable senators, on December 9, 1999, a significant event occurred in the New Brunswick legislature. I rise to share my elation with you.

A private member's bill was introduced by Tory MLA Eric MacKenzie to set aside one day every year as Holocaust Memorial Day. When the legislature approves the bill this week, my home province of New Brunswick will become the third province in Canada to proclaim a day to remember the evil of which mankind is capable — the systematic murder of millions of men, women and children — and to remember the thousands of soldiers, men and women, who fought overseas to defeat the killing machine of the Third Reich and liberate the death camps.

The first Holocaust Memorial Day in New Brunswick will be observed on May 2, 2000. The date of the memorial day will change each year depending on the Jewish lunar calendar and will coincide with Yom Hashoah, a commemorative day observed around the world each year since 1951.

The Province of Ontario enacted similar legislation last year and the Government of Prince Edward Island passed a Holocaust Memorial Day law last week. To all of these provinces, I say "Thank you."

In tabling the legislation, Mr. MacKenzie said:

> At the end of the most violent century in human history, we share an obligation to the new millennium to mark and learn the lessons of history.

As George Santayana wrote:

> Those who cannot remember history are doomed to repeat it.

The timing of this motion on December 9 was appropriate as the international community marked two important human rights anniversaries. December 9 is the fifty-first anniversary of the United Nations Genocide Convention that made genocide a violation of international law, and December 10 marks the fifty-first anniversary of the proclamation of the Universal Declaration of Human Rights.

I am proud of the new legislation by the Lord government acknowledging one of the grossest violations of human rights. The memory of the Holocaust should provide the impetus for active opposition to racism and hatred. We only have to scan the newspapers to read each day of incidents of evil that underscore the dark side of human existence.

Honourable senators, because time stills the voices of the survivors, it is incumbent on us to speak out on the lessons of the Holocaust as parliamentarians, as community leaders, and, indeed, as members of the human race.

If I may indulge in a moment of partisanship, honourable senators, you will note that all three provinces proclaiming Holocaust Memorial Day are governed by the Progressive Conservative Party. I hope that the federal government will soon follow suit and proclaim Holocaust Memorial Day a national day of remembrance.

• (1430)

SPECIAL OLYMPICS

OTTAWA—WINTER GAMES 2000

Hon. Janis Johnson: Honourable senators, I wish to draw your attention to a particular event today because we may be leaving here this week. I do so as a member of the Canadian Special Olympics Foundation and a long-time volunteer.

The event of which I speak will last for five days, starting on Tuesday, January 25, 2000, when the City of Ottawa and Canada's capital region will host the Canadian Special Olympics Winter Games. Approximately 600 athletes and 200 coaches from across Canada will participate in the games. An estimated 600 parents and 1,200 volunteers will also come to support the athletes.

The Special Olympics have come to Ottawa once before, in 1981, when we hosted the summer games. This time, of course, it will be the winter events. We will be seeing competition in such sports as alpine skiing, figure skating, curling and snowshoeing.

Many of us have great regard for the cause of the Special Olympics, but not everyone realizes that these games are high-calibre sporting events that, for sheer drama, can compete with any athletic competition. This was the intent of Dr. Frank Hayden of McMaster University, who dedicated his life to the cause of physical fitness. You may remember his famous "5BX program," which he developed with the Royal Canadian Air Force.

Dr. Hayden took issue with the popular assumption that children, and later adults, with mental handicaps were unable to participate in sport and recreation programs. Working with a group of children on an intense fitness program, Dr. Hayden proved that the mentally handicapped could develop high enough skills to compete as international athletes. He went on to found the Special Olympics. The Kennedy family, in particular Eunice Kennedy Shriver, took the leadership in the United States. The late Harry "Red" Foster was the Canadian who took this idea and created our Canadian Special Olympics.

The games were first held in 1968 at Soldier Field in Chicago, and now the Special Olympics have over 1 million participants in 140 countries. Athletes benefit from the Special Olympics in three ways: Their physical condition improves dramatically, they gain self-confidence and they learn important social skills. All of these qualities are enhanced by the appreciation and support of an audience.

I would ask all honourable senators to try to attend one of the Special Olympics events during the week of January 25. You will be most impressed by the dedication and heroism of our athletes. I have attended many Special Olympics events nationally and internationally. For me, these games symbolize what sport can do for individuals and what growth is possible in the human body and spirit when you truly try, as do our athletes.

The Special Olympics oath says it well. It is read at the beginning of each games by an athlete who then lights the Olympic flame. It states:

> Let me win, but if I cannot win let me be brave in the attempt.

Honourable senators, I hope to see you at the games.

DISTINGUISHED VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I should like to draw your attention to the presence in the gallery of our colleague and recently retired friend the Honourable Senator Marian Maloney.

ROUTINE PROCEEDINGS

[*Translation*]

OFFICIAL LANGUAGES

SECOND REPORT OF STANDING JOINT COMMITTEE PRESENTED

Hon. Rose-Marie Losier-Cool, Joint Chair of the Standing Joint Committee on Official Languages, presented the following report:

Tuesday, December 14, 1999

The Standing Joint Committee on Official Languages has the honour to table its

SECOND REPORT

The Standing Joint Committee on Official Languages adopted the following resolution in committee on December 7, 1999:

BE IT RESOLVED, — That, in the opinion of the Standing Joint Committee on Official Languages of the Senate and the House of Commons of Canada, the Ontario legislature should determine, by way of legislation, that the City of Ottawa, as Canada's capital, has two official languages, English and French.

The Committee agreed that, while matters concerning municipalities are within the jurisdiction of the provinces, Ottawa, as the capital of Canada, presents a special case and should reflect the bilingual nature of Canada through its two official languages, English and French.

Respectfully submitted,

ROSE-MARIE LOSIER-COOL
Joint Chair

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

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

CIVIL INTERNATIONAL SPACE STATION AGREEMENT IMPLEMENTATION BILL

REVISED REPORT OF COMMITTEE

Hon. Peter A. Stollery: Honourable senators, with leave of the Senate, I wish to present a revised version of the fifth report of the Standing Senate Committee on Foreign Affairs on Bill C-4, the Civil International Space Station Agreement Implementation Act.

For technical reasons, the observations that should have been included with our report presented Thursday, December 9, 1999, were inadvertently omitted.

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

Hon. Senators: Agreed.

Tuesday, December 14, 1999

The Standing Senate Committee on Foreign Affairs has the honour to present its

REVISED FIFTH REPORT

Your Committee, to which was referred Bill C-4, to implement the Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station and to make related amendments to other Acts, has examined the said Bill in obedience to its Order of Reference dated December 1, 1999, and now reports the same without amendment, but with the following observations:

The Committee has two specific concerns that it wishes to see addressed. First, the Committee is keenly interested in perusing (*a*) the regulations deemed by the Governor in Council to be required to carry out the purposes of the Act and to give effect to the above-mentioned Agreement, and (*b*) the Code of Conduct that will establish the chain of command affecting the astronauts on the space station. The Committee, concerned about the insufficient scope of the provision for notification to Parliament contained in Clause 10 of Bill C-4, requests that the Government of Canada, through the Canadian Space Agency, refer both the said regulations and the Code of Conduct directly to the Committee immediately following their initial publication in *The Canada Gazette*.

Second, Clause 11 (2.34) fails to contain a definition of the term "Canadian flight element" employed in the English version of Clause 11 (2.31) (*b*). The Committee is of the view that there is a need for new wording within the English version of Clause 11 (2.31) (*b*) that would remove the existing ambiguity between the terms "flight element provided by Canada" and "Canadian flight element" and, moreover, ensure a consistency between the English and French versions of the Bill. The Government of Canada, in the omnibus bill that is anticipated shortly, should clarify Clause 11 (2.31) so as to alleviate the Committee's concerns.

Respectfully submitted,

PETER STOLLERY
Chairman

[*English*]

ADJOURNMENT

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

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, December 15, 1999, at 1:30 p.m.

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

Hon. Senators: Agreed.

Motion agreed to.

NISGA'A FINAL AGREEMENT BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-9, to give effect to the Nisga'a Final Agreement.

Bill read first time.

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

Hon. Jack Austin: With leave, at the next sitting of the Senate.

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

Some Hon. Senators: No.

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, in the normal course, a notice of two days is required before we can proceed with debate at second reading stage, and I understand that leave has not been granted to abridge that period. Accordingly, this matter should be placed on the Orders of the Day for second reading on Thursday next.

The Hon. the Speaker: Honourable senators, there being no agreement, this bill will be placed on the Order Paper for second reading on Thursday next, December 16, 1999.

Hon. Marcel Prud'homme: Honourable senators, if it is the wish of this house, perhaps we could give unanimous consent to dispose of this bill, which has been studied so extensively in the other place?

The Hon. the Speaker: I asked whether leave was granted and the reply was "No"; therefore, it is not a debatable question.

Is it agreed, honourable senators, that the bill be placed on the Orders of the Day for second reading on Thursday next, December 16, 1999?

Hon. Senators: Agreed.

Motion agreed to and bill placed on the Orders of the Day for second reading on Thursday next, December 16, 1999.

[*Translation*]

APPROPRIATION BILL NO. 2, 1999-2000

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-21, granting to Her Majesty certain sums of money for the Public Service for the financial year ending March 31, 2000.

Bill read first time.

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

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

[*English*]

• (1440)

CANADIAN NATO PARLIAMENTARY ASSOCIATION

DELEGATION TO 1999 ANNUAL SESSION HELD IN AMSTERDAM, THE NETHERLANDS—REPORT TABLED

Hon. Bill Rompkey: Honourable senators, I have the honour to table the third report of the Canadian NATO Parliamentary Association which represented Canada at the forty-fifth annual session held in Amsterdam, The Netherlands, November 11 to 15, 1999.

RECOMMENDATIONS OF ROYAL COMMISSION ON ABORIGINAL PEOPLES RESPECTING ABORIGINAL GOVERNANCE

NOTICE OF MOTION TO AUTHORIZE ABORIGINAL PEOPLES COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY

Hon. Charlie Watt: Honourable senators, I give notice that on Wednesday next, December 15, 1999, I will move:

> That, notwithstanding the Order of the Senate adopted on Wednesday, November 24, 1999, the Standing Committee on Aboriginal Peoples be authorized to examine and report on the recommendations of the *Royal Commission Report on Aboriginal Peoples* (Sessional paper 2/35-508.) respecting Aboriginal governance and, in particular, seek the comments of Aboriginal peoples and of other interested parties on:
>
> 1. the new structural relationships required between Aboriginal peoples and the federal, provincial and municipal levels of government and between the various Aboriginal communities themselves;
>
> 2. the mechanisms of implementing such new structural relationships; and
>
> 3. the models of Aboriginal self-government required to respond to the needs of Aboriginal peoples and to complement these new structural relationships;
>
> That the committee be empowered to submit its final report no later than February 16, 2000, and that the committee retain all powers necessary to publicize the findings of the committee contained in the final report until February 29, 2000; and
>
> That the committee be permitted, notwithstanding usual practices, to deposit its report with the Clerk of the Senate, if the Senate is not then sitting; and that the report be deemed to have been tabled in the Chamber.

[*Translation*]

QUESTION PERIOD

INTERGOVERNMENTAL AFFAIRS

REFERENDUM CLARITY BILL—APPLICATION OF TERMS

Hon. Pierre Claude Nolin: Honourable senators, clause 2.(2) of the bill on the clarity of the referendum process sets out factors to be considered by the House of Commons in determining whether a clear majority of Quebecers has expressed a will to secede. You will remember that in the last referendum 49.6 per cent of Quebecers voted in favour of a sovereign Quebec in a partnership with the rest of Canada. Conversely, 50.4 per cent of Quebecers were opposed to that option.

If we take a closer look at these percentages on the basis of ethnicity, data provided by Statistics Canada and results by areas, we come to the conclusion, which is shared by just about every expert, that 62 per cent of francophones voted in favour of sovereignty, whereas 95 per cent of anglophones and 98 per cent of allophones voted against the Parti Québécois' option.

Considering that francophones account for the majority of Quebecers and that the anglophone and allophone votes are concentrated in certain defined areas of the province, could the minister tell us if, in the event of a Yes victory by separatists — something that does not at all appeal to me — the ethnic and geographical distribution of the vote would be taken into account in determining the clarity of the majority of voters who will have supported that option?

[*English*]

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, the issues are twofold, as the Supreme Court clearly pointed out. First, the question should be clear, and the bill speaks to that issue very well. The second issue is: What is considered a clear majority? That is the matter to which the honourable senator refers.

The court, in its deliberations and in its judgment, was very careful not to attempt to define in any detail exactly what factors would be taken into account well in advance of the vote.

The bill makes reference to certain factors that are to be considered. Whether they will be the only factors considered will be relevant to those circumstances at the time. The bill is very careful not to prejudge or outline precisely at what point the bar might be set, as tempting as that might have been in some circumstances. The bill in that respect is clearly consistent with the judgment of the Supreme Court.

[*Translation*]

Senator Nolin: Honourable senators, that is why I gave percentages in my preamble. No expert has contested the fact that the majority of Quebec francophones, 62 per cent, voted Yes to the Parti Québécois question in the 1995 referendum. On the other hand, 95 per cent of anglophones and 98 per cent of allophones voted No.

Is your bill not assigning lesser importance to the vote of the francophone majority than to the anglophone and allophone minority?

[*English*]

Senator Boudreau: Honourable senators, there is no attempt in the legislation to place more value on one element of the vote than on another. Certain conditions will be reviewed in assessing the quality of the majority. Some of those conditions are set out in the legislation while others are not. That is due to the fact that one may not be able to anticipate at the time precisely what considerations will come into play.

However, the bill clearly provides for open consideration of all the factors. The bottom line is that the people of Quebec, regardless of their background, must speak clearly, with a clear majority, on their intentions, and that view must be expressed as a result of a clear question having been put to them.

[*Translation*]

Senator Nolin: Honourable senators, would a clear majority not mean a majority of each ethnic component of the population of Quebec?

Senator Finestone: Honourable senators, am I a second-class citizen?

[*English*]

Senator Boudreau: Honourable senators, I would resist, as a matter of principle, determining in advance the specific levels required to establish that question. The legislation goes to great pains to follow the Supreme Court decision, and it states that one must look at the circumstances which exist at the time of a future referendum. The political actors of the day will do that. Hopefully, that will never happen. However, that is not the point.

• (1450)

Concerning the type of requirement that the honourable senator suggests, I could not give him an indication, although I would be surprised if that were to be the case at the time. I must repeat: The legislation clearly follows closely the rationale of the Supreme Court decision, which says that, at the time, the political actors will address the question of a sufficient majority. The proposed legislation very specifically outlines some of the factors that will be taken into account.

[*Translation*]

Hon. Jean-Claude Rivest: Honourable senators, as far as national unity is concerned, I will remind the minister that, in the recent history of Canada, the only effective way of combating Quebec separatism has been for the Government of Canada to better understand relations between Quebec and Canadian society as a whole. I refer in particular to the time of Lester B. Pearson or Brian Mulroney, when support for separatism dropped by 20 or 25 per cent.

Historically, in Quebec there have been two ways in which the sovereignist or separatist parties have tried to win Quebecers over to the idea of independence: the referendum approach, to gain a Yes majority in answer to the question, and the plurality of seats won in the National Assembly in an election, as in 1966 with the RIN, and in 1970 and 1973 with René Lévesque's Parti Québécois. Using the later option, a sovereignist government would have declared Quebec's sovereignty. Honourable senators will probably remember that. I am not making it up.

The current government bill addresses only the referendum approach. What would become of Canada's unity if a sovereignist party in Quebec went back to what René Lévesque was proposing in the early 1970s, namely, that the election of a clearly sovereignist PQ government would mean that a simple majority of members in the National Assembly could set in motion the province's separation from the rest of Canada? The bill is silent on this.

As an illustration of how preposterous the federal government's intervention in this debate is, there is the first scenario where the Parti Québécois would announce that the election of a sovereignist government gave it a mandate to declare independence, as was the case in 1970 and 1973. They did not win, but that was their program.

Under this scenario, would the federal government pass a bill defining the nature of the Parti Québécois' election platform in order to clarify its sovereignty option? Would the federal government propose that a bill be passed so that, if a separatist government were elected, 50 per cent plus one would not be enough to change the parliamentary majority? That is exactly what the government is now doing with this bill on the clarity of the referendum process when it indirectly imposes the question and implies in the bill that 50 per cent plus one is not a legitimate majority.

You will understand why the Government of Canada's position is not accepted by all stakeholders in Quebec and why it is preposterous. Why does the Canadian government not express its opinion, as it is entitled to do? As the primary guardian of national unity, it is entirely within its rights to do so. However, it must be left to the National Assembly, and particularly to the Liberal Party of Quebec, the voice of the federalists in Quebec, to argue about the clarity of the question and about what would constitute a majority. This would be a far greater service to the federalist, Canadian unity option.

Once again, I ask the Leader of the Government in the Senate how the Canadian government would view it if the Parti Québécois decided to forget about the referendum approach and told Quebecers that, by electing the PQ, a sovereignist party, to power, they were giving it a mandate to democratically set in motion the move toward sovereignty?

[*English*]

Senator Boudreau: Honourable senators, the honourable senator's question is rather complex both in its length and in its nature.

The Premier of Quebec has served notice that he intends to bring on another referendum when winning conditions permit. Surely, as responsible citizens and as a responsible federal government, we must respond to that statement. What the government is suggesting is simple and obvious. We have a responsibility to take the Premier of Quebec at his word. If he comes forward with another referendum, we must ensure that he does so with a clear question and understands that, before he can act, he must achieve a clear majority. I cannot see how anyone in Quebec or in any other part of the country could object to that. Does the Premier of Quebec not intend to bring forward a clear question? Does he intend to act in other circumstances? What, precisely, is his objection?

There is a concern that another route might be taken by a subsequent Government of Quebec. That issue was submitted to the Supreme Court of Canada, which responded in detail. As I recall, the Premier of Quebec was high in his praise of the decision. One of the fundamental elements of that decision was that the people of Canada and the Government of Canada have a role to play. I, for one, would hate to see the government abdicate that role.

[*Translation*]

Senator Rivest: Honourable senators, the minister suggested to me that the government decided to act at this time because the Premier of Quebec announced he wanted to hold a referendum. Why did the Right Honourable Pierre Elliott Trudeau, guardian of national unity, not decide to introduce a bill to determine the parameters of the question and of the majority when, the day after his election in 1976, René Lévesque announced that he planned to hold a referendum on sovereignty? Was the Right Honourable Pierre Elliott Trudeau not as concerned about Canadian unity and protecting the interests of all Canadians as the present Prime Minister of Canada?

[*English*]

Senator Boudreau: Honourable senators, Prime Minister Trudeau was very interested in the issue of Canadian unity. However, we have a situation that apparently has the approval of the Premier of Quebec and certainly the Prime Minister of Canada, where the Supreme Court has elucidated on this topic in a way that is unprecedented in our history. The decision was not available to us previously; it is available now. As I recall, that decision received approbation from the Premier of Quebec.

• (1500)

In its decision, the Supreme Court laid out some very clear criteria. It gives the federal government a reasonable opportunity to put these issues in clear perspective at a time when we are not in the middle of a referendum battle. Essentially, the government is insisting on two simple but fundamental points. If any province — not just Quebec — wants to separate from this country, it must put a question clearly to its citizens and it must have a clear answer. That is true whether it is Alberta, B.C. or Nova Scotia. Surely, nothing can be more reasonable than that. However, the obligation on the federal government is not to act if those circumstances are not present.

[*Translation*]

Senator Rivest: Honourable senators, I have a supplementary question. Could the minister quote for us the passage from the Supreme Court of Canada decision requiring the Canadian Parliament to pass legislation? Does the Supreme Court of Canada decision, which states what the minister just told us — and, I am happy to agree — have force of law in Canada? Why not let Jean Charest and the Liberal Party of Quebec fight the battle and remind the present Government of Quebec that —

[*English*]

— the law of the land is laid down in the decision of the Supreme Court of Canada? We do not need Mr. Dion's bill.

Senator Boudreau: That is a different argument, honourable senators. If one says that we do not need it or the timing is wrong, then clearly one is suggesting that there is no disagreement. The Supreme Court indicated, quite clearly, that these were factors that should be considered. I would be happy to supply a copy of the Supreme Court decision to the honourable senator.

Senator Ghitter: Answer the question!

Senator Boudreau: This legislation shows that there are responsibilities on both sides. The Government of Canada has clearly embraced its responsibility here. The federal government has put its position before the people of this country in a very reasonable way, and it has indicated what factors would be involved to determine the conditions laid out in the Supreme Court decision. These factors will be very helpful to any citizen of any Canadian province to have before them before they make a final decision — that is, if they are asked to make such a decision.

SUPREME COURT

TERMINOLOGY REGARDING DECISION ON REFERENDUM REFERENCE

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I have counted 10 times, in the brief series of questions that we have had so far on this matter, the word "decision" being used by the Leader of the Government in the Senate with reference to the opinion that was rendered by the Supreme Court of Canada.

If we are to be dealing with a matter of such critical import, we must be very careful and precise in our wording. Does the minister not agree that the reference that was made by the Government of Canada and submitted to the Supreme Court was not for a decision but, rather, for an opinion?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, as the honourable senator states, it was referred. The Supreme Court of Canada has issued its opinion, and I agree. It was an opinion that was welcomed at the time by the Premier of Quebec.

TRANSPORT

NOVA SCOTIA—FEDERAL GOVERNMENT COMMITMENT TO TWINNING HIGHWAY 101

Hon. J. Michael Forrestall: Honourable senators, I should like to know when we are going to get those helicopters. I should also like to know where the Minister of Transport and the President of Onex are today. However, I thought the minister might be a bit more conversant with the following question.

As the minister is aware, there seems to be confusion over federal commitments to aid the Province of Nova Scotia in twinning Highway 101 through the Annapolis Valley. Could the minister indicate to the chamber what commitment has been made to our province in this regard? If he does not have an immediate answer at hand, perhaps he might be prepared to let us have a written one at his earliest convenience.

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I will certainly check with the Minister of Transport as to whether there are any recent developments. I was recently at a meeting where this subject came up for discussion between the minister and, I believe, a member from the other place who represents the particular area in question.

As the honourable senator would know from experience, the selection of highway projects is within the a jurisdiction of the provinces. They determine the priorities then meet with the federal government to request financing. The federal funding covers some of the cost of these roads and is provided on the basis of the provincial government's priority list.

It is my understanding that the minister indicated he might consider a request should it come from the provincial government. In fact, special provision might be made. However, to the best of my knowledge, no such request has come forward to date. I qualify that because I have not spoken to the minister on this matter in the last week and a half.

FINANCE

ALLOCATION OF CANADA PENSION PLAN CREDITS IN MARRIAGE BREAKUPS

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate. About two years ago, when it announced the changes in Bill C-2, the Government of Canada also announced that five specific issues would be studied during the next triennial review of the CPP. That review was concluded last week. Only one of those five issues was ever mentioned in the government's news release, and that was a decision to keep on looking for ways to ensure that the CPP credits are split upon marriage breakup, as the law requires.

Far too often, this does not happen, even though the law makes it mandatory. We have been told that the federal and provincial governments are still trying to deal with this issue. Nothing has changed in the last two years. Now we are told that the federal and the Manitoba governments are "exploring the possibility of a pilot project in Manitoba."

My question is: Could the government leader advise the Senate as to whether the words "exploring the possibility" are a fancy way of saying, "Well, maybe we will and maybe we will not"?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I do not know to what extent the government, specifically the Minister of Finance, is reviewing that particular issue. However, I would be more than happy to make the inquiry and bring back a response to the honourable senator.

Senator Oliver: I thank the leader for that.

Honourable senators, as the minister knows, most Canadian women live out their final years in poverty, after staying at home while their husbands are out in the workforce, and they have no pension. Could the Leader of the Government report back on two other things? First, could he advise the Senate as to the exact state of the explorations and the possible pilot project? Second, could he tell us why, two years later, this problem has still not been resolved, particularly for those women who have worked in the home and not gone outside the home to work?

Senator Boudreau: Honourable senators, I would be more than happy to include those additional requests for information.

HEALTH

POSSIBLE REGULATIONS REGARDING ADDITION OF CAFFEINE TO BEVERAGES

Hon. Mira Spivak: Honourable senators, there has been a series of newspaper stories in *The Ottawa Citizen* on the caffeine question which is now before Health Canada. The question is whether to allow soft drink makers to add caffeine to beverages such as Mountain Dew. Last spring, this chamber unanimously passed a motion on the matter, and this series of articles raises new questions. I should like to ask a couple of them.

First, can the Leader of the Government in the Senate indicate whether or not the government will abide by the Senate's motion and maintain this country's current regulations, which do not allow caffeine to be added to citrus soft drinks, until there is evidence that the health of Canadians, especially children and young people, will not be harmed?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I thank the honourable senator for that question. I am not aware at the present time of any change to current government policy, but I will inquire of the Minister of Health to ensure that I am up to date on that topic.

REQUEST FOR STUDY OF EFFECTS OF CAFFEINE

Hon. Mira Spivak: Honourable senators, there is a report which will be coming to the minister, but we have written him a number of letters in addition to this resolution urging him not to do anything, to "No."

The stories quote Health Canada officials as saying that they have no figures on the amount of caffeine Canadians are already ingesting from soft drinks, chocolate, coffee, and tea — all the sources. They say they are left with two choices: They can rely on the figures that industry gives them, or they can make up a worst-case scenario. I would suggest there is a third. They can have Statistics Canada generate the baseline data.

• (1510)

Can the honourable minister ask the Minister of Health to require evidence from an unbiased source in determining whether the health of Canadians will or will not be harmed?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I am uncertain from the honourable senator's question whether she is suggesting that the requirement be placed on Statistics Canada forms.

Senator Spivak: Yes, to generate that baseline data.

Senator Boudreau: In fact, I believe that the process of designing and determining the information is under way now. I am not sure what stage it has reached, but I will make inquiries. I will pass along the honourable senator's request.

Senator Spivak: Thank you.

DELAY IN RELEASE OF SCIENTIFIC REPORT

Hon. Mira Spivak: Honourable senators, just to clarify, *The Canada Gazette* has already issued a notice that the proposal from Pepsi-Cola be agreed to, and in so doing it stated, quite baldly, that no studies had been done and that the main purpose was to harmonize Mountain Dew, for example, with the American formula. As you know, Mountain Dew contains more caffeine than many cups of coffee. Young children, including my grandchildren after they finish playing hockey, think nothing of having a Mountain Dew or a sport drink. Now we are letting loose caffeine upon them. Caffeine is a psychoactive drug, and it should be labelled as a drug.

At any rate, the report from the committee of scientists which is responding to the minister was, as I understand, completed last July. Could the honourable minister also check why, if it was completed last July, the publication of that report has been delayed?

Hon. J. Bernard Boudreau (Leader of the Government): I would be happy, on behalf of the honourable senator, to make that further inquiry.

With respect to the substance of the question, one always must strike a balance between the extent to which human activity is regulated by government and the extent to which freedom of choice is available. I recognize the legitimacy of the honourable senator's concern; however, I do not think we are about to pass legislation to bar minors from Tim Hortons.

Senator Spivak: Honourable senators, I cannot let that comment stand. We are not passing legislation. We are attempting to protect young children from a psychoactive drug being added to something which they consume. There are many other situations like that. This is not regulation; this is prevention for the health of young children. Do not confuse the two.

Senator Boudreau: I take the honourable senator's point. I just mention, though, that there is a balance to be struck.

The Hon. the Speaker: Honourable senators, before I hear the Honourable Senator Kinsella, I would advise that this will be the last question within the time period allocated for Question Period.

FISHERIES AND OCEANS

COAST GUARD—PROVISION OF CRUISES TO PREMIERS

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, last summer the Canadian Coast Guard vessel *Sir Humphrey Gilbert* was used to take Premier Tobin and his cabinet on a cruise off the coast of Newfoundland. As a political minister from Nova Scotia, would the minister undertake to make similar arrangements for Premier Hamm and his colleagues this summer?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, not only must I decline the honourable senator's invitation but also I give him my personal assurances that I will not undertake any such venture.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I have a response to a question raised in the Senate on November 24, 1999, by Senator Oliver regarding the purchase of major companies by United States firms; a response to questions raised in the Senate on November 30, 1999, by Senator Spivak and Senator Andreychuk, regarding Manitoba, loss of confidential data, transfer of personal data, principle of consent procedures for security of personal data; a response to a question raised in the Senate on December 6, 1999, by Senator Andreychuk, regarding the collapse of World Trade Organization discussions on the agricultural subsidies of member states and assistance to Canadian farmers; and, finally, a response to a question raised in the Senate on December 8, 1999, by Senator Kenny, regarding the status of the Holocaust Memorial Museum.

THE ECONOMY

PURCHASE OF MAJOR COMPANIES BY UNITED STATES FIRMS—GOVERNMENT POLICY

(Response to question raised by Hon. Donald H. Oliver on Novembee 24, 1999)

While foreign purchases of Canadian companies have increased recently, these trends should be considered over a longer horizon.

Canadian direct investment abroad has expanded by even more than inward investment over the 1990s, to the extent that Canadians now own more direct investments abroad than foreigners hold in this country.

The exchange rate is only one of many factors that influence foreigners to invest in Canada. In fact, the recent increase in foreign purchases of Canadian companies has coincided with a *strengthening* of the Canadian dollar.

Ultimately, in a world that competes for investment dollars, foreign direct investment in Canada is an expression of confidence in our economy.

	Canadian Direct Investment abroad	**Foreign Direct Investment in Canada**
	$billions	$billions
	Quarterly Rates	Quarterly Rates
98Q1	8.1	7.8
98Q2	6.3	3.6
98Q3	14.9	8.3
98Q4	10.2	4.7
99Q1	4.5	3.2

ELECTIONS CANADA

MANITOBA—LOSS OF CONFIDENTIAL DATA—
TRANSFER OF PERSONAL DATA—PRINCIPLE OF CONSENT—
PROCEDURES FOR SECURITY OF PERSONAL DATA

(Response to questions raised by Hon. Mira Spivak and Hon. A. Raynell Andreychuk on November 30, 1999)

The government is committed to the protection of personal information, and, in particular, to ensuring that information about individuals is only used and disclosed in accordance with the law. Elections Canada shares this commitment.

In setting up the Register of Electors, Elections Canada sought the advice of many experts, including the Office of the Privacy Commissioner of Canada.

To maintain the Register, Elections Canada receives information from the federal, provincial and territorial governments.

Federal government data suppliers (i.e., Revenue Canada and Citizenship and Immigration Canada) will only pass information about individuals to Elections Canada with the consent of those individuals. To obtain this consent, Revenue Canada has added a box to income tax returns that filers can check off if they agree to have only specified data (name, address, date of birth) forwarded to Elections Canada. A similar change has been made to citizenship application forms so that new Canadians can provide their consent to have personal data transferred to Elections Canada.

Elections Canada also has agreements with provincial and territorial governments (e.g., motor vehicle registrars and vital statistics registrars) for the provision of information to update the Register of Electors. These agreements are based on the premise that the data supplier has authority to disclose the information. The issue of consent is therefore determined by the governing legislation in each province or territory.

Once Elections Canada has received information from its suppliers, the law provides that it can only be used for electoral purposes.

To safeguard the information in the Register of Electors, Elections Canada, from the time the Register was created, put in place sophisticated security monitoring systems (both human and technical) and well-documented data handling and processing procedures.

Following the loss of the tape containing information on Manitoba drivers, Elections Canada contracted an independent security firm to audit all aspects of its tape transfer procedures. The firm gave Elections Canada high marks for its security arrangements. It recommended additional minor adjustments to existing procedures, and these have been implemented.

Canada's Privacy Commissioner, Mr. Bruce Phillips, has conducted his own investigation. He concurred with the results of the audit. "Having considered all the circumstances of this case, there is no doubt in my mind that simple human error contributed to the loss of the tape," wrote Mr. Phillips. "I am satisfied that Elections Canada has put in place a number of measures to ensure that this does not happen again, and I do not believe that additional recommendations beyond those already identified are required at this time."

It is also important to note that the Privacy Commissioner, as well as the jurisdictions supplying data to update the National Register of Electors, have the right to audit Elections Canada's entire process at any time — examining how information for the Register is collected, stored, updated and used — to ensure that the electors' right to privacy is respected.

INTERNATIONAL TRADE

COLLAPSE OF WORLD TRADE ORGANIZATION DISCUSSIONS—
AGRICULTURAL SUBSIDIES OF MEMBER STATES—
ASSISTANCE TO CANADIAN FARMERS

(Response to question raised by Hon. A. Raynell Andreychuk on December 6, 1999)

The Government of Canada is committed to creating a stronger, more efficient grain handling and transportation system, with greater accountability and more benefits to farmers.

The objective of the Government is to ensure that producers benefit from changes to the grain and transportation system arising from the recommendations of Justice Estey and the proposals of Mr. Arthur Kroeger.

It should be emphasized that the Government of Canada has always stated throughout this process that particular attention should be given to ensuring that producers share in the benefits resulting from a more commercial and competitive system.

The Minister of Transport, the Honourable David Collenette, has received the stakeholders' reports and Mr. Kroeger's recommendations in September.

The Minister of Transport, with the support of the Minister responsible for the Canadian Wheat Board and the Minister of Agriculture and Agri-Food Canada, is examining these reports to determine the best means of moving forward towards a more commercially oriented system.

The Government will carefully study the stakeholder's report and Mr. Kroeger's recommendations, along with the work done on the port, hopper car disposal and road repair issues, before proceeding with the implementation of a reform package.

HERITAGE

STATUS OF HOLOCAUST MEMORIAL MUSEUM

(Response to question raised by Hon. Colin Kenny on December 8, 1999)

The Government acknowledges the importance for all Canadians to learn about crimes against humanity, such as the Holocaust, and to understand the lessons of the past as we move into the next millennium.

No commitment has been made by the Government nor by the Department of Canadian Heritage regarding the establishment of a Holocaust Museum.

There are a number of ways to commemorate violations of human rights and securities. These include a museum exhibition, a public awareness campaign, the establishment of a memorial or learning centre.

Pursuant to the discussions surrounding the accommodation needs of the Canadian War Museum, the Canadian Museum of Civilization has been asked by officials of the Department of Canadian Heritage, on behalf of the Minister, to undertake consultations on how best to commemorate the Holocaust and other acts of genocide. However, a time frame for these consultations has not been established.

While the Government recognizes the importance of learning about the tragedy of crimes against humanity in the 20th century, its role in national commemoration of the Holocaust or other genocides has not been determined.

ORDERS OF THE DAY

CIVIL INTERNATIONAL SPACE STATION AGREEMENT IMPLEMENTATION BILL

THIRD READING—DEBATE SUSPENDED

Hon. Peter A. Stollery moved the third reading of Bill C-4, to implement the Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station and to make related amendments to other Acts.

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

Hon. Jerahmiel S. Grafstein: Honourable senators, Bill C-4 is, on the surface, an innocuous, even delightful bill inviting enthusiastic, bipartisan support. It is a law to implement the international agreements Canada made for cooperation on the space station. Thus, all could not fail but support the underlying principle of the bill. It passed quickly through the other place after several hours of debate and review by the committee there. I, too, support the principle of the bill. Sometimes, however, God or the devil lurks in the detail. When the bill came to the Standing Senate Committee on Foreign Affairs for quick review and approval, I glanced at the bill for the first time.

Before the committee hearings, I asked government officials why it was necessary to have parliamentary approval when the international improvements could be implemented by cabinet approval alone. Why take up Parliament's busy time? I was told that the sole reason for parliamentary consideration was that this international agreement required amendments to the Criminal Code. Why? It is because the agreement envisages member states agreeing that each of their criminal laws would have extraterritorial jurisdiction to the space station, including flights to and from the space station.

Honourable senators, I turn to clause 11, proposing amendments to the Criminal Code and article 22 of the agreement to analyze the ramifications of this extraterritorial application of our law. I discovered member states included the European Union, the United States, as well as Canada, Japan and Russia, and that the extradition laws and criminal laws of each of those states would apply.

Honourable senators will recall the amendments I moved to Bill C-40, the Extradition Act, supported by my colleague Senator Joyal, to remove the Minister of Justice's discretion when it came to requests for extradition by states where the accused would be subject to the death penalty. Capital punishment was abolished by Canada almost three decades ago. After a full debate, those amendments were defeated in the Senate. Honourable senators will recall that the party whip was applied on this side.

Bill C-4 resurrects the same issues as the defeated amendments of Bill C-40. The Minister of Justice still retains the discretion to decide whether or not to seek assurances from a state that retains capital punishment requesting, for example, extradition of an accused Canadian charged with murder. I pointed out the invidious position of the Minister of Justice deciding a question of life or death when Canada's law was clear — no capital punishment. This fearful discretion has been transported to outer space by Bill C-4.

Let me draw a simple proposition. A Canadian is charged with murder in the space station. A European is also charged with murder in the space station. Canada and all members of the European Union have abolished capital punishment. The space station was launched from Texas, a state that retains capital punishment. The European could not be extradited to Texas unless Texas gave the member state in Europe assurances that the death penalty would not be applied. Our Minister of Justice, however, would have the discretion to decide whether or not to extradite the Canadian, with or without assurance that the death penalty would apply.

• (1520)

This issue, honourable senators, is now squarely before the Supreme Court of Canada in the *Rafay and Burns* case, which we referenced in our debate in the Senate on Bill C-40. The Minister of Justice was prepared to extradite, to Texas, two 18-year-old Canadian youths charged with capital offences without assurances that the death penalty would not be applied in that case. This, I believed, was contrary to section 7 of the Charter of Rights, and some on the British Columbia Court of Appeal opined in agreement. The case is now on appeal to the Supreme Court of Canada, where it was argued on October 5, 1999.

Last week, at the Foreign Affairs Committee, we were told by officials that the Supreme Court, in a rather unusual order, has requested that the case be argued for a second time. Hence, the question raised by our earlier amendment to Bill C-40, which was defeated in the Senate, is still before the Supreme Court of Canada, albeit on the narrow facts of that case. Hence, my abstention at clause-by-clause stage in committee, and my intended abstention at the report stage and on third reading.

Why the abstention rather than another amendment? We were told by officials, in effect, that it is the government's intention to introduce appropriate amendments if the Supreme Court so decides to inhibit the minister's discretion. I ask myself: Why the rush to legislation? Clarity from the Supreme Court should be available shortly. Yet, if the government still seems anxious to proceed, I accept the official undertaking to renovate this peculiar and inconsistent law once the Supreme Court of Canada opines.

I abstain and await the Supreme Court's decision and, hopefully, future expeditious government action to remove this anachronistic and invidious discretion from the Minister of Justice.

Hon. Serge Joyal: Honourable senators, I wish to advise you of my grave concerns about Bill C-4, which implements Canada's ratification of the international agreement creating the Civil International Space Station. I am indebted to my colleague Senator Grafstein for bringing this issue to my attention while I was attending to the Legal and Constitutional Affairs Committee's study of Bill S-10.

Bill C-4 contains provisions, in clause 11, which raise questions about the power of the Minister of Justice to authorize the extradition of Canadian citizens to states where the death penalty may be imposed. Clause 11 of the bill amends section 7 of the Criminal Code by inserting new subsections which have the effect of extending the application of the Criminal Code to the international space station. The proposed new subsection of the Criminal Code, subsection (2.31), reads in part as follows:

> — a crew member...who commits an act or omission outside Canada...that if committed in Canada would constitute an indictable offence is deemed to have committed that act or omission in Canada —

The net result is that Canada's criminal jurisdiction is extended to the new international space station. Moreover, the criminal jurisdiction is exercised in cooperation with 14 other countries under the international agreement governing the space station. Consequently, the other 14 contracting states will have similar provisions under their penal law. In clause 11, Bill C-4 raises precisely the same substantive matter that was raised in clause 42(2) of Bill C-40 in the last session, namely, the discretion of the Minister of Justice to order an extradition where the death penalty applies. Once again, there is no safeguard against the death penalty for persons extradited from Canada.

As you will remember, I stated the fundamental principles supporting my position on the essential question of the death penalty in the spring of this year when the Senate dealt with Bill C-40, respecting extradition. During the third reading debate on that bill, I supported an amendment proposed by Senator Grafstein which would have required the Minister of Justice to secure an undertaking from the requesting state that the sentence of death would not be imposed or, if imposed, would not be carried out. Rather, the death penalty would be changed to a mandatory life sentence without the possibility of parole. In my mind, leaving the discretion over life and death of any person in Canada to a minister of the Crown is fundamentally wrong and contrary to the provision of section 7 of the Canadian Charter of Rights and Freedoms.

These important questions are currently the subject of the *Burns and Rafay* case that was heard in the Supreme Court of Canada this year. This case, as you will remember, involves the decision of the Honourable Allan Rock, P.C., to authorize the extradition of two 18-year-old Canadian citizens to a state in the United States where they are charged with murder and may face the death penalty. In formulating his decision, Mr. Rock did not seek any assurance that the death penalty would not be sought by the prosecuting authority in that jurisdiction. The Supreme Court ruling has yet to be rendered, but the learned justices ordered a rehearing in the case on October 25, 1999.

In his testimony on Tuesday, December 7, 1999, before the Foreign Affairs Committee, Mr. Yvan Roy, General Counsel of the Criminal Law Policy Section in the Department of Justice, explained that the power of a Minister of Justice to authorize extradition would continue to be one of complete and unfettered discretion and is not qualified by Bill C-4. The statement made by Mr. Roy was:

> ...the Minister of Justice, who is responsible for the application of the Extradition Act, may refuse to make a surrender order when the conduct in respect of which the request for extradition is made is the subject of criminal proceedings in Canada against that person.

Mr. Roy also acknowledged that the court ruling in the *Burns and Rafay* case may create an obligation on the minister to demand assurances before authorizing extradition in such cases. He said:

> Mr. Chairman, you know that the matter actually is presently before the Supreme Court of Canada in *Burns and Rafay*. It may very well be that another section of this particular piece of legislation will have to be invoked, depending on what the Supreme Court of Canada will have to say if the death penalty were to be an option in the foreign state, again depending on what the Supreme Court of Canada says. According to current law, there is no such obligation, but that may become the law, depending on that judgment.

Honourable senators, given these circumstances, and taking into account the principles that I have already explained in detail on the public record in the Senate on the very issue of the death penalty last spring, I cannot in good conscience vote in favour of clause 11 of Bill C-4, which gives effect to the agreement for shared criminal jurisdiction on the Civil International Space Station. Consequently, I wish to declare for the record that I intend to abstain from voting when the question is put for the third reading of Bill C-4.

[*Translation*]

Hon. Lucie Pépin: Honourable senators, I hereby give notice that I shall refrain from voting on Bill C-4 for the same reasons as the Honourable Senators Grafstein and Joyal.

[Senator Joyal]

[*English*]

Hon. A. Raynell Andreychuk: Honourable senators, I will not enter into the discussion Senators Grafstein and Joyal have raised.

Hon. Dan Hays (Deputy Leader of the Government): I would beg the indulgence of honourable senators. I notice that it is 3:29 p.m. and we had agreed that we would revert to the Notice of Inquiry of Senator Gauthier at this time in order to give him an opportunity to speak for 15 minutes.

Therefore, I would ask for leave to revert to the inquiry standing in the name of Senator Gauthier, which deals with a report on the recent la Francophonie Summit.

The Hon. the Speaker: Is it agreed, honourable senators, that leave be granted to proceed to Inquiry No. 1?

Hon. Senators: Agreed.

Senator Andreychuk: On a point of order, I would remind honourable senators that the Foreign Affairs Committee was given permission to meet at this time.

The Hon. the Speaker: I am sorry, Honourable Senator Andreychuk, leave has been granted.

Senator Andreychuk: I would seek instruction.

The Hon. the Speaker: Is the honourable senator raising a point of order?

Senator Andreychuk: Yes. The Senate has authorized the Standing Senate Committee on Foreign Affairs to meet at 3:30 today. Notwithstanding that, I intend to yield so that we may accommodate Senator Gauthier.

• (1530)

Is it the wish of the chamber that I speak to this order now, or that I speak to it later and attend the committee, of which I am a voting member? I find myself dealing with this conundrum every Tuesday and Wednesday.

Senator Hays: Honourable senators, I do not think that the chamber can help Senator Andreychuk. It is her choice. She is obviously free to attend the meeting, as the Senate has given the committee authority to meet while the Senate is sitting.

I will undertake to ensure that Senator Andreychuk receives notice when we resume the debate on Bill C-4, which will be in approximately 15 minutes, so that, if she wishes, she may return and participate in the debate at that time.

Senator Andreychuk: I will ask one of my colleagues to adjourn the debate in my name if I am not here.

Senator Hays: Since we hope to be able to deal with Bill C-4 today, I would ask that Senator Andreychuk speak today.

Hon. Jean-Robert Gauthier: Honourable senators, I am quite prepared to speak after Senator Andreychuk, if she is noted as being the last speaker on this order.

Senator Andreychuk: I will adjourn the debate in my name and deal with it tomorrow.

Senator Hays: I would prefer that we deal with it today.

Senator Andreychuk: Honourable senators, I did not intend to speak at length on this matter. We had a substantial debate on the death penalty when we dealt with the Extradition Act. My position was clearly stated on the public record then, and I continue to hold the same position.

I accepted that there was an urgent need for Canada to be part of the implementation of the space agency agreement. Consequently, I believe that it would not be good public policy or parliamentary practice to await the Supreme Court decision. Should the Supreme Court ruling require further legislation, we can deal with it at that time. Presently, the law is clear. As I said, this issue was debated when we dealt with the Extradition Act. I have not changed my opinion on that issue.

I want to thank both the Department of Justice and the committee for doing a good job in relation to clause 11 of Bill C-4. There was a problem in the English version, although I understand that the French version reads perfectly well. We are making Canadian criminal law and extending it to the space station. Under the definition of "crew member of a Partner State," crew members come under our jurisdiction for an act or omission that "is committed on, or in relation to, a flight element provided by Canada or damages a Canadian flight element."

There is no definition of "Canadian flight element" in the bill, and the Department of Justice conceded that while "flight element" is defined, "a flight element provided by Canada" is not necessarily the same as a "Canadian flight element."

While this seemed like quibbling to some, those who find themselves subject to criminal jurisdiction will find it to be more than that. We must be very clear. Anyone who is charged with an offence under this legislation deserves to have precision in the law.

I was pleased that the committee took my concerns under advisement. The department has indicated that in the next omnibus bill they will make the clarification and provide a precise definition so that no one who comes before our courts will be uncertain of his or her position. I thank the committee for that. It is extremely important, as we venture into space and create extraterritorial criminal law, that we be precise. I was pleased that the government and the Department of Justice accepted my point of view.

I will support this legislation.

The Hon. the Speaker: Honourable senators, to ensure that the record is accurate, the Senate had given leave to hear the Honourable Senator Gauthier. That inquiry was called. Honourable senators then, however, decided to revert to the debate on third reading of Bill C-4. That is the question now before the Senate.

If no other honourable senator wishes to speak, we will suspend debate at this time.

Debate suspended.

BUSINESS OF THE SENATE

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, when Senator Andreychuk rose to speak, Senator Gauthier agreed to speak after her intervention to accommodate her desire to attend the meeting of the Standing Senate Committee on Foreign Affairs. It is my understanding that there is agreement that Senator Gauthier now speak to Inquiry No. 1, standing in his name on the Orders of the Day.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, it is very clear that our agreement is to suspend debate on the bill currently at third reading in order to hear Senator Gauthier speak to his inquiry.

The Hon. the Speaker: Is leave granted to proceed to Inquiries?

Hon. Senators: Agreed.

[*Translation*]

LA FRANCOPHONIE SUMMIT

INQUIRY—DEBATE ADJOURNED

Leave having been given to proceed to Inquiries:

Hon. Jean-Robert Gauthier rose pursuant to notice of Wednesday, October 13, 1999:

> That he will call the attention of the Senate to the recent Francophonie Summit, which was held in Moncton last September.

He said: Honourable senators, on October 13, I gave notice that I would call the attention of the Senate to the recent Francophonie Summit, which was held in Moncton last September.

The agenda at the summit held in Moncton, New Brunswick, in early September was a busy one to say the least. Unfortunately, the media were quickly distracted from the agenda of the heads of state who were present, focussing instead on whether or not the presence of certain people at the summit was legitimate.

As senators know, over the past two years, I have had the honour of chairing the Assemblée parlementaire de la Francophonie. Therefore, I will say a few words on the role of the APF at the summit, before dealing with the thorny issue of legitimacy and ability to represent, in the case of a head of state who is suspected of having violated certain rights which we in Canada consider to be fundamental and basic in any free and democratic society.

As honourable senators know, the Assemblée parlementaire de la Francophonie is a valuable link between decision makers within the Francophonie and francophone populations, since the assembly has 47 sections in various francophone parliaments, states and communities, and 12 associated sections.

In addition to its important interparliamentary, analytical and cooperative work, the assembly takes part in the establishment and strengthening of democratic institutions and in election observation missions.

At the Mauritius Summit held in October 1993, after reaffirming the critical role of this parliamentary institution at the core of representative democracy and the rule of law, the APF, which is the only parliamentary organization within the Francophonie, was recognized as the democratic link between governments and peoples within the Francophonie.

• (1540)

It was therefore decided to recognize the APF as an Assemblée consultative de la Francophonie, as was confirmed by the Charte de la Francophonie adopted in Hanoi in November 1997, which also created the position of Secrétaire général de la Francophonie, held by Boutros Boutros-Ghali, former UN secretary-general.

At its regular session in Abidjan in July 1998, the Assembly decided to adopt the name Assemblée parlementaire de la Francophonie, in the interests of consistency with the Charter.

As an advisory assembly, the Assemblée parlementaire de la Francophonie took part in the Moncton Summit, during which its new president, Nicolas Amougou Noma, first vice-president of Cameroon's General Assembly, spoke before the heads of state and government.

In his address, Mr. Amougou Noma reaffirmed the APF's attachment to parliamentary democracy and the rule of law, and restated his opposition to any transfer of power through armed force. He recalled the stands taken by the APF against child soldiers and its support for the speedy establishment of the future international criminal court.

The Assemblée parlementaire de la Francophonie supports the decision taken at the Moncton Summit to create an observatory of democracy, which it has always thought was a good idea and to which it intends to contribute its parliamentary expertise. The APF is also pleased at the favourable reception given its plan for the establishment of a parliament of young francophones, with which it wishes to be closely associated. It noted with great interest the summit declarations concerning linguistic diversity, which it has vigorously promoted.

However, it has doubts about the continued increase in recent years in the number of members of the Francophonie, which is not to become a second United Nations or Commonwealth. In the future, new memberships should be conditional on undertakings with respect to the use of French in international relations and in education.

Finally, the APF indicates that its membership encompasses only those parliamentary assemblies which are elected in strict adherence to the constitutional standards of their countries, and that it has suspended members who have ceased to respect that principle. It is therefore all the more entitled to denounce the campaign accusing the Francophonie of particular complacency toward dictatorial regimes. It expresses its conviction that ongoing actions are required in favour of day-to-day democracy, such as it is involved in at this time, missions to observe elections, training of elected representatives, forums and regularly held meetings to discuss how best to be a parliamentarian in a democratic country.

In this connection, the media have made much of the presence of representatives from Rwanda and the Congo. By so doing, in my opinion, they have cast a shadow over the accomplishments of the Moncton Summit and have sullied this exercise so crucial to the vitality of the international Francophonie. I took the liberty of writing to Prime Minister Jean Chrétien on this matter last August 24.

In his response to me on August 31, the Prime Minister referred to Canada's desire:

> — to respect its obligation to the Francophonie, that is to enable the representatives of all member states to meet in Canada for this Seventh Summit.

This does not, however, in any way imply that we sanction the violations committed by certain governments or individuals which might take part.

I understand the Prime Minister's position, but I believe it is high time for there to be a redefinition of the eligibility of certain leaders to take part in international meetings.

Moreover, Canada's Minister of Foreign Affairs, the Honourable Lloyd Axworthy, has acknowledged that Canada was, or would be, in favour of a right of humanitarian intervention. The principle of human safety and security taking precedence over any other activity, including the development of trade, is therefore acknowledged.

I am on side with such a position. In my opinion, it is in the same vein as the one I expressed to the Prime Minister, which is that human rights must come before a good number of customs and practices relating to international relations.

It is my personal belief that it will soon be possible to impose the respect of human rights as a *sine qua non* condition for international representation by countries wishing to take part in an international conference. This would be a powerful means of showing the way to certain recalcitrant countries, just as trade embargoes and the severing of diplomatic ties do.

I trust, honourable senators, that this recommendation for states wishing to take part in international organizations to be required in future to respect human rights at all times will be acted on.

On motion of Senator Kinsella, debate adjourned.

[*English*]

CIVIL INTERNATIONAL SPACE STATION AGREEMENT IMPLEMENTATION BILL

THIRD READING

Leave having been given to revert to Government Business, Order No. 1:

On the Order:

Resuming debate on the motion of the Honourable Senator Stollery for the third reading of Bill C-4, to implement the Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station and to make related amendments to other Acts.

The Hon. the Speaker: Honourable senators, does any other honourable senator wish to speak on the motion for third reading of Bill C-4?

Hon. Peter A. Stollery: Honourable senators —

The Hon. the Speaker: If the Honourable Senator Stollery speaks now, his speech will have the effect of closing debate on third reading.

Senator Stollery: Honourable senators, Canadians are among the largest users of space technology and live in one of the most connected nations in the world. The credit for this reality is based on a vision that seeks to open doors of opportunity for our industry, scientists, astronauts and, above all, future generations of Canadians.

Seizing on the opportunities provided by Canada's partnership role in the international space station is the essence of Bill C-4. While this legislation sets out to ratify our contribution to this remarkable space venture, Bill C-4 is one small step for Canada in a project that represents a giant leap for humanity. It is only normal that a project of such scope and grandeur would require the definition of a very elaborate management regime. The parties to the agreement — namely Canada, the U.S., Russia, Japan and 11 European nations — have undertaken to establish a framework for mutual international cooperation in relation to the detail, design, development, operation and utilization of a permanently inhabited Civil International Space Station for peaceful purposes. The agreement provides for mechanisms and arrangements to ensure the fulfilment of these objectives.

Legally speaking, Bill C-4 implements our commitments under the intergovernmental MOU by bringing Canadian legislation in line with this agreement. More important, Bill C-4 extends the application of Canada's Criminal Code to Canadians on board the space station and, in exceptional circumstances, to foreign nationals. This is similar in principle to the other extraterritorial applications of the Criminal Code, for example, on high-sea oil drilling platforms. Moreover, Bill C-4 also ensures that information essential to meeting our space station commitments is available to the Canadian government and that any information provided to meet those commitments is used exclusively for that purpose.

I should like to take a moment now to thank my colleagues, in particular the members of the Standing Senate Committee on Foreign Affairs, for taking an active, earnest interest in the bill and the ISS program. As chairman of the committee, it was encouraging to witness the attention the members gave to this important milestone for Canada in space.

Certain issues related to codes of conduct, jurisdiction and extraterritorial application were just a few of the points raised and debated during the committee hearings. I am pleased to report that the senators' diligent and efficient treatment of the bill has brought us one step closer to its historic passage. Ratification will clear the path for Canada, and ultimately for all space station partners, and open a new era of space exploration — the operation and utilization of the world's largest permanently inhabited laboratory in space.

As we look to the next century, Canada is a world leader in space technology, poised to reap the opportunities of the knowledge-based economy that is Canada's future.

• (1550)

As we look to the next century, with Bill C-4, we reaffirm our partnership in the Civil International Space Station project, providing the robotic arm and hand to help assemble it, and giving Canadian scientists access to this amazing orbiting laboratory. Canadians will feel a deep sense of national pride as they watch, "live from space," Canadian astronauts taking part in the building of this milestone in human endeavour.

There is no doubt that as we stand at the threshold of a new millennium, we also stand on the threshold of further exploration of our universe, important scientific discoveries and innovative technological advances. The most important discoveries of the next 25 to 50 years are likely to be those of which we here today cannot even conceive.

Let us imagine 100 years ago how people were reflecting on the achievements of scientific discovery over the past 100 years, as we are doing today. Revolutionary theories of matter, evolution and thermodynamics of the 1800s must have seemed astounding in terms of progress. The road to progress, however, was, and remains, scattered with skeptics whose imagination falls far short of the rapid rate of change in science and technology. Let me quote some of the great, and now humorous, testaments of years ago.

Charles H. Duell, head of the U.S. Office of Patents, observed in 1899 that "everything that can be invented has already been invented." In 1943, Thomas Watson, chairman of IBM, was quoted as saying that there is a world market for maybe five computers. It is no wonder that in 1949 an edition of *Popular Mechanics* forecast that computers in the future may weigh no more than 1.5 tonnes. In addition, a Western Union internal memo once stated that the telephone had too many shortcomings to be seriously considered as a means of communication.

When Bell invented the telephone back in 1876, he imagined great uses for this innovation, but look at where we are today. Would Bell ever have imagined the ways in which telephone lines have transformed our society and how they are now being used to transmit multiple parties and accompanying video images? Since his death in 1922, the global communication industry, with Canadian companies among the leaders, has undergone an amazing revolution, connecting Canadians to the wireless world in which they now live. Estimates predict that between 270 and 350 telecommunications satellites will be launched by 2007 to support an expanding global information infrastructure, with revenues doubling by 2005.

Bell's "electrical speech machine" paved the way for today's information superhighway. Who would have imagined that an on-line electronic industry, or e-commerce, would grow, from late 1993 to late 1995, from nothing to something as important as steel and automobiles were in their days.

Our medical community, supported through space, science and technology, is working at completely eradicating certain ailments and finding solutions to others. Our scientific community, among whom Canadian space scientists are the leaders, are contributing to our understanding of the universe and the effects of global warming on our atmosphere. Our industrial community, with the Canadian space industry generating annual revenues over $1.4 billion, is generating jobs, wealth and expertise for an ever-increasing global market.

Behind each and every discovery and innovation is a history of courage to take risks and the perseverance to succeed. There were many attempts to fly a heavier-than-air machine prior to the Wright brothers' measured mile of flight; placing a man in orbit, let alone reaching this distance, was a trying endeavour; and, as we are experiencing today, NASA's current efforts to explore the surface of Mars are certainly not one of its most shining moments, as was the case 30 years ago with Neil Armstrong's historic first step.

[Senator Stollery]

Yet, despite the setbacks, each milestone must be perceived as part of humanity's intrinsic need to explore and understand the unknown. Over the next 50 years, there is no way of telling which small stone overturned, even a stone on the surface of Mars, will lead to a whole new world of science.

Alexander Graham Bell once said:

> When one door closes another door opens; but we so often look so long & so regretfully upon the closed door, that we do not see the ones which open for us.

The Civil International Space Station is but one such door that is open to Canada. It secures a place for Canada as a key partner in the most adventurous space venture ever undertaken in history, while ensuring that Canadian scientists, astronauts, experiments and technology get on board.

The most notable long-term investment in these partnerships is the creation of opportunities that instill in our youth a recognition and motivation that they, too, can play a role in the breakthroughs of the new millennium. It is therefore with great pride that I invite honourable senators to support this milestone for all Canadians and humanity in the fields of space exploration and technological innovation.

The Hon. the Speaker: Honourable senators, it was moved by the Honourable Senator Stollery, seconded by the Honourable Senator Sibbeston, that this bill be read the third time now.

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

Hon. Senators: Agreed.

Motion agreed to and bill read third time and passed.

[*Translation*]

INCOME TAX CONVENTIONS IMPLEMENTATION BILL, 1999

THIRD READING—DEBATE ADJOURNED

Hon. Céline Hervieux-Payette moved the third reading of Bill S-3, to implement an agreement, conventions and protocols between Canada and Kyrgyzstan, Lebanon, Algeria, Bulgaria, Portugal, Uzbekistan, Jordan, Japan and Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

She said: Honourable senators, I am pleased to address Bill S-3, the Income Tax Conventions Implementation Act, 1999, at third reading.

This bill amends the tax convention between Canada and Japan, implements new conventions with Kyrgyzstan, Lebanon, Algeria, Bulgaria, Portugal, Uzbekistan and Jordan, and replaces the existing convention between Canada and Luxembourg.

The tax conventions in the bill are of particular importance to Canadian businesses and individuals who do business and invest in those countries. Allow me to set the bill in context.

Tax conventions have two main objectives: to avoid double taxation and to prevent fiscal evasion.

This means of course that tax conventions have a significant impact on two priorities for a state: the promotion of trade and investments, and tax fairness.

Tax conventions relate directly to the international trade of goods and services, and they have a concrete impact on domestic economy. Need I remind honourable senators that Canada's exports currently account for over 40 per cent of our annual GDP?

Over the years, Canada's economy has also been dependent on direct foreign investment and on information, capital funds, technologies, royalties, dividends and interest. Tax conventions promote the trade of such goods and service.

Moreover, tax conventions contribute to the fairness of the tax system by ensuring that Canadians are not subject to double taxation, a situation that may arise when a taxpayer lives in a country but earns an income in another country. Without a tax convention, both countries could tax this income.

One possible solution to this problem would be for the country of residence to exempt this income from taxation or to give a tax credit under a tax convention for the tax paid to the country where the income was earned.

The countries concerned may also agree to reduce the withholding tax rate. Indeed, countries usually withhold taxes on income paid to non-residents. In the absence of a tax convention or other form of legal exemption, the withholding tax rate in Canada for non-residents is 25 per cent.

The tax conventions covered by Bill S-3 provide for the reduction in the withholding tax on dividends, interest and royalties paid to Canadians operating in the countries concerned.

• (1600)

I will give some clarification, if I may. The maximum withholding tax on dividends received from companies holding at least 10 per cent of voting shares in the company paying the dividends will be 5 per cent under the terms of the conventions with Luxembourg, Lebanon and Uzbekistan, and 10 per cent under the one with Bulgaria and Jordan.

Under our convention with Portugal, a company must hold at least 25 per cent of voting shares in order to be subject to the maximum 10 per cent tax rate on dividends. The conventions with Algeria and Kyrgyzstan set the withholding tax at 15 per cent for all dividends.

With respect to interest, the minimum withholding tax rate is 10 per cent under the conventions with Bulgaria, Luxembourg, Jordan, Uzbekistan, Lebanon and Portugal, and 15 per cent under the ones with Algeria and Kyrgyzstan.

There are certain exemptions, for example in connection with certain types of government loans.

A maximum 10 percent withholding tax will be applied to royalties under the terms of our conventions with Bulgaria, Luxembourg, Jordan, Uzbekistan, Kyrgyzstan and Portugal. The maximum for Algeria, again in relation to royalties, will be 15 per cent. As well, certain conventions contain a provision for exemption or a maximum of 5 per cent on royalties relating to copyright, software, patents and know-how.

The protocol with Japan reduces the maximum rates applicable to dividends between companies to 5 per cent and exempts from Japanese enterprise tax Canadian enterprises operating ships or aircraft in international traffic, a courtesy measure already allowed by Canadian provinces to Japanese companies carrying out similar activities in Canada.

Another important component of Bill S-3 is the rules being considered regarding the taxation of gains made by emigrants before their departure.

The conventions with Luxembourg, Portugal, Lebanon and Jordan comply with these new rules by providing measures in the event of double taxation in such a situation.

Since most conventions signed by Canada, including those with Uzbekistan, Bulgaria, Algeria and Kyrgyzstan, were negotiated before these rules were announced, a provision was added to the proposed rules governing the migration of taxpayers, which would enable Canada to unilaterally grant a foreign tax credit to emigrants until the year 2007. This eliminates any risk of double taxation on gains made before an emigrant's departure until these conventions are renegotiated so as to comply with the new rules. The same provision applies to Japan, which asked that the issue be reviewed at the upcoming negotiations.

Finally, I wish to address the concerns expressed by some honourable senators regarding the tax convention concluded with Uzbekistan, in light of practices affecting human rights in that country.

Honourable senators, as Senator Gauthier mentioned earlier, the respect of human rights, at both international and national levels, is of paramount importance to our government. Canada's human rights policies are firmly based on values that are fundamental to our fellow Canadians.

These values are reflected in our democratic institutions and practices, in the federal and provincial human rights commissions, in the Charter of Rights and Freedoms, and in our traditions of peace, order and good government.

Canada's approach to human rights since 1986, regardless of the changes in government, has been based on commitment and dialogue. Canada feels that the establishment of a multi-level dialogue with those countries that give us concerns about how they treat human rights is an effective way of promoting transparency, respect for human rights and compliance with the rule of law.

Our policy is based mainly on pragmatism and principles that guide us when defining concrete measures to bring about positive and real changes in a given country.

Of course, the measures we take vary according to the country concerned, its willingness to discuss human rights issues with Canada, the extent of our influence in the country or the region, the number and strength of NGOs working in the country to promote human rights, and a whole range of other factors.

In the case of Uzbekistan, at the bilateral or multilateral level, Canada is urging that country to engage in economic and democratic reforms and to better respect human rights.

On the multilateral level, in 1994 and 1995, Uzbekistan ratified six important United Nations treaties on human rights, which allows Canada and other United Nations member states to check whether Uzbekistan meets its obligations under these treaties. Moreover, Uzbekistan signed the Helsinki Final Act, making it a member of the Organization for Security and Co-operation in Europe. Canada supports the OSCE monitoring and democratization programs in that country. As such, CIDA sponsored the participation of representatives of Uzbek human rights organizations to a major OSCE conference on this topic held in Warsaw in 1998.

In addition, the Canadian International Development Agency supports a number of Uzbek projects in the area of human rights, including the preparation and distribution of a brochure on the Universal Declaration of Human Rights by the Uzbek national human rights centre.

Uzbekistan is one of the newly independent states that used to be part of the former U.S.S.R. In 1985, Canada signed a double taxation agreement with the Soviet Union. As a result of the breaking up of the Soviet Union, it had to negotiate new agreements with states such as Uzbekistan, which are not among the succession states bound by the double taxation agreement entered into with the former Soviet Union.

In 1995, Canada undertook negotiations prompted by the interest shown by Canadian companies in this market, particularly in the natural resource sector. Uzbekistan is one of the world's biggest gold producing countries. As well, it has major deposits of copper, silver, tungsten and zinc, and underground supplies of natural gas, oil and uranium.

Although exchanges with Uzbekistan have been modest so far, Canadian companies continue to show an interest in such sectors as mining, telecommunications and, just recently, education, in particular the creation of commercial schools in the country, and educational system reform.

The negotiation of a double taxation convention with Uzbekistan is in keeping with Canada's desire to facilitate the transition from a command economy to a market economy, and to promote the democratic development of the newly independent states of the former Soviet Union. Legal instruments such as the double taxation convention foster transparency, predictability and respect of the primacy of law in our bilateral economic relations.

Honourable senators, Canada will continue to engage in dialogue with Uzbekistan so as to encourage this country to improve its practices in terms of democratic development, respect of human rights, and economic reform.

It is hard to penetrate the markets of the former Soviet Union and much advance preparation is required. The legal instruments this requires, such as the double taxation convention, consist of framework agreements to protect the interests of Canadians and Canadian businesses. When Canadians choose to expand their activities into difficult markets such as Uzbekistan, the advantage of such instruments is that they clarify the rules and make forecasting easier.

I will address two other points before I close. First, honourable senators, when the provisions of a tax convention differ from those in the Income Tax Act, the tax convention takes precedence so as to guarantee that the objectives I have referred to will be met. Second, the fact that such conventions are in large part patterned on the Model Double Taxation Convention prepared by the Organization for Economic Cooperation and Development. which is accepted by most countries, leads one to believe that they comply with international standards in this field and will not lead to disputes.

Honourable senators, elimination of double taxation on commercial operations involving the countries addressed by this bill can only benefit Canadian businessmen and investors doing business in these countries and will do much to foster harmonious international relations and profitable commercial exchanges.

• (1610)

Canada currently has tax conventions with 67 countries. That number will climb to 74 once the conventions in this bill have been implemented, thus promoting Canada's goal to expand its network of international tax conventions.

Honourable senators, I urge you to give quick passage to this legislation.

[*English*]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, Senator Andreychuk is interested in speaking to this bill as well, but she has had to go to the meeting of the Standing Senate Committee on Foreign Affairs. I move the adjournment of the debate in her name, and I am sure she will speak to it tomorrow.

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, since it is late in the year, could I ask Senator Kinsella whether there are other speakers on the opposition side who wish to speak to the order in addition to Senator Andreychuk?

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I also intend to speak to the bill, and I hope to do so tomorrow. I believe we are the only two senators who wish to speak.

On motion of Senator Kinsella, for Senator Andreychuk, debate adjourned.

SPEECH FROM THE THRONE

MOTION FOR ADDRESS IN REPLY ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Kroft, seconded by the Honourable Senator Furey, for an Address to Her Excellency the Governor General in reply to her Speech from the Throne at the Opening of the Second Session of the Thirty-sixth Parliament.—(*8th day of resuming debate*).

Hon. Marjory LeBreton: Honourable senators, I am pleased to participate in the debate on the Speech from the Throne, although I agree with most observers and commentators that the Throne Speech was particularly devoid of vision and lacked any meaningful direction on the part of the government. I have only one thing to say with respect to that: Quelle surprise!

That brings me to the subject of my speech: the unchallenged claim of economic management by the Prime Minister and the Prime Minister in waiting. The PMO's summary of the Throne Speech stated:

> We have ended an era of skyrocketing deficits and public debt — for good. We have brought down back-to-back balanced budgets for the first time since 1951-52. We have put the debt-to-GDP ratio on a permanent downward track.

The government's spinmeisters and propagandists consistently and successfully it seems, because they are unchallenged, would have Canadians believe that the former government was responsible for this state of affairs. They have played fast and loose with the truth. I am well aware, honourable senators, that the only words to describe this tactic would be considered unparliamentary.

What we have is a government which misrepresented every single initiative of the former Progressive Conservative government of Brian Mulroney — on free trade, on the GST, on privatization and deregulation, on the Pearson airport development, and on the purchase of helicopters, to name but a few. Why, then, when they have this unblemished record of reversal of policies, are they allowed to get away with the claim that they "inherited a mess," to use the Prime Minister's own words?

What are the facts? Honourable senators, in the fall of 1993, the deficit stood at $37.5 billion. The Liberals came to power in November 1993 and quickly went to work piling every conceivable expenditure onto that figure to raise it to as high a level as possible before the end of the 1993-94 fiscal year which ended in March 1994. They had five months to do their handiwork. They were throwing around the speculative figure of $44 billion to $46 billion shortly after coming to office, hoping it would stick in the public mind — and it did, unfortunately. After a great deal of effort, they did get the deficit number up to $42 billion. Their aim was clear, and that was to get the number higher than the $38 billion which was the deficit when the Progressive Conservative government was formed in 1984.

How did they do this? They added expenditures to the books that were, in fact, expenditures intended for future years. Some examples: GST rebates, $.6 billion; early release of tax refunds, $1.8 billion; defence restructuring charges, $0.7 billion; provincial stabilization payments not due to be paid until 1996 and 1997, $1.4 billion; resource tax liabilities, $.5 billion. In fact, honourable senators, three of the above-mentioned figures were not paid out as of March 31, 1993, even though they were put on the books for 1993-94.

The Auditor General objected to this practice but the government did not care. They needed a certain figure for their own political propaganda purposes. They were prepared to take a day or two of potential negative news reports in order to meet their political agenda.

Why would they not? They faced virtually no opposition in Parliament, and they were supported at the time by a compliant and, in many cases, a fawning media. The opposition parties, the Bloc and Reform, were more interested in destroying the Progressive Conservative Party than in holding the government accountable. Thus, the Liberal government perpetuated a myth which they spun into reality and which they continue to recite, like the trained seals they are, to this very day. Because of their known record of misrepresentation in all other areas, it is surprising that they have not been challenged on this as well. They get high marks in spinning a story. I suppose, if you are a Liberal, this is terrific. It suits their purpose to perpetuate this

myth. Since fairness has never been a strong suit for them or their apologists — all is fair in love, war and politics, as the saying goes — let us accept that as an unfortunate reality which, by the way, only contributes to the low opinion about politics and politicians in the public.

Let us approach this another way, honourable senators, and that is by bluntly pointing out that there is a wrong to be righted here, and hope that this filters through to all of those who observe the political scene. I intend to do just that: set the record straight.

The situation the new Progressive Conservative government inherited in 1984 was bleak. Ontario Liberal leader David Petersen said at the time, "Brian Mulroney has just inherited one helluva mess." Outgoing Liberal deputy prime minister and secretary of state for external affairs, Jean Chrétien, said, with uncharacteristic honesty which he has not since displayed, "We left the cupboard bare."

Just this past October, Michael Bliss, in a column on Mr. Trudeau entitled "Trudeau at 80 — A Tattered Legacy," stated:

> The Trudeau government's failures in economic policy were so complete that even their ruins have disappeared. Who but political archaeologists remembers the Foreign Investment Review Agency, the terms of the national energy program, the wage and price controls? Who cares?

He continued:

> Even as Pierre Trudeau held office, the bankruptcy of Liberal attempts at state moulding of the Canadian economy had become palpable. Socialist-derived notions of planning, collectivism and progress through public ownership collapsed in Canada and around the world, as did socialism itself.
>
> All that remained of Liberal economics in the Trudeau years was a stinking mountain of debt and an oppressive taxation regimen. The Chrétien government has tried to turn away entirely from this aspect of Mr. Trudeau's legacy.

Honourable senators, the fact is that government intervention in the economy and our lives was at its height. Government regulation and red tape was the flavour of the day, and government spending was at record highs. Through the Trudeau-Chrétien years, as a result of these policies, Canada was crippled by interest rates in excess of 22 per cent. Honourable senators, I remember this because I had to pay 19.5 per cent for a first mortgage, and I am sure those of you who had to mortgage your home had to pay the same. We had double-digit inflation and debilitating policies like the NEP and FIRA. The Auditor General of the day correctly reported that the Government of Canada and Parliament had "lost control of the public purse."

[Senator LeBreton]

Program spending had increased by over 14 per cent per year for 15 years. The federal deficit had gone from almost zero to $38 billion dollars and the federal debt had increased by more than 1,000 per cent, with some of the biggest increases coming when Jean Chrétien served as Minister of Finance.

• (1620)

As a new government in 1984, we had the onerous task of changing both attitudes and realities. We were determined to take this on. We believed that we owed it to Canadians who elected our new government. As a university study noted:

> The long term consequences —
>
> — of the Trudeau economic policies —
>
> — runaway inflation, a free falling dollar, sky high interest rates and worsening unemployment — presented Prime Minister Mulroney with serious problems that took a long time to resolve.

There was no doubt that Canada had to alter course, and fundamental policy changes would have to be embarked upon. What was done?

On the fiscal side, the average rate of growth of program spending was cut by 70 per cent. Government spending on programs moved from $1.23 for every dollar in total revenues to 97 cents by 1993. An operating deficit of $16 billion per year was transformed into a $6.6-billion surplus. In effect, excluding debt servicing and costs, by 1990 the Government of Canada was being run in the black.

What about the deficit that we keep hearing about in the other place and in the public arena? The truth is, as any observer of financial reporting knows, that the only true measure of deficit reporting is as a percentage of the GDP. Even the infamous Red Book conceded that. It cited the standard used by member states in the European Community in holding to the Maastricht Treaty of maintaining a deficit goal of 3 per cent of GDP.

What are the facts? As a percentage of the GDP, the federal deficit was virtually cut in half by the former government — from 8.7 per cent in 1984 to 4.6 per cent in 1990-1991. Then we were hit by a worldwide recession which adversely affected the number, bringing it back up to 5.8 per cent for 1993-94. Even with the recession, the deficit was almost 3 per cent lower when we left office than when we came in, even with the Liberal add-ons that they did in the last five months of the fiscal year. The undeniable fact is that public finances were left in a position sufficiently stronger in 1993 than we found them in 1984.

As a Privy Council analysis noted, and it is interesting that this analysis was written by a member of this chamber who happens to be on the other side now:

> ...all deficits and increases in the national debt were attributable to interest on the debt that existed before —

— our —

> — government came to office.

What other measures did our government initiate that contributed to our present economic health? The Foreign Investment Review Agency, which drove away foreign capital, was abolished. Key sectors of the economy, such as energy, transportation and financial services, were deregulated, and there was a complete overhaul of the government's regulatory process. In the energy sector, for example, the National Energy Program, which siphoned billions of dollars from the Alberta economy and devastated the oil industry, was abolished, along with the Petroleum and Gas Revenue Tax, the PGRT.

The government privatized or dissolved 39 Crown corporations and other similar holdings. As well, legislation was passed and administrative steps were completed for the elimination or consolidation of 41 agencies, boards and commissions. This, along with operational efficiencies, resulted in 90,000 jobs being removed from the federal payroll. From Teleglobe to Air Canada to Canadair and Petro-Canada, new private sector companies emerged to successfully compete and expand in a challenging international marketplace. Canadair and de Havilland were black holes into which money was thrown when they were sold to Bombardier. Today Canadair is a success story in the aviation industry, with sales of the Challenger 604, regional aircraft and the Global Express. Bombardier is now the third largest aircraft company in the world. Only Airbus and Boeing are larger.

The Patent Act was revamped to strengthen the pharmaceutical industry, attracting billions of dollars in new investment in research and development, now employing thousands and thousands of Canadians. We all remember the Liberal doublespeak on this courageous policy move.

Free trade with the United States and NAFTA were and are the centrepieces of our many achievements. The opposition, especially from the Liberals, was brutal. Mr. Mulroney was personally demonized and our patriotism was questioned. It is now clear that we chose the right course for Canada. Who but the Liberals could embrace these policies while keeping a straight face? It seems largely forgotten now that the Liberals ferociously opposed both the free trade agreement with the United States and the NAFTA, which included Mexico, only to swallow themselves whole when they came into government.

In 1988, the last year before implementation of the Canada-U.S. Free Trade Agreement, our merchandise exports to the United States totalled $101 billion. In 1998, 10 years later, Canada exported $252 billion in goods to the United States. In a low-inflation environment, with dollars virtually constant over the period, our exports to the United States effectively doubled in eight years.

Honourable senators, it took 120 years from Confederation for our exports to the United States to reach $100 billion. It took just 10 years under free trade to surpass $250 billion.

Among other calamities the Liberals said would occur under free trade was the loss of medicare, regional development and our cultural institutions. The Liberals were joined by Bob White and the Canadian Auto Workers, who suggested the auto industry would go south. It has gone south, all right. From 1991 to 1998, our exports of automotive products to the United States increased from $31 billion to $75 billion, an increase far in excess of 100 per cent.

Were it not for free trade, our economy might well have remained stagnant throughout the 1990s. That is not to say that this was achieved without sacrifice and dislocation. As the Business Council on National Issues noted:

> Export performance has been the brightest star in the Canadian galaxy.

It is fair to say, without equivocation, that free trade is an outstanding success.

What about the GST? This was the single-most controversial and unpopular initiative undertaken by the former government during our nine years in office. Who can ever forget the shenanigans here in this chamber? As a matter of fact, one would be hard pressed to find an equivalent precedent in our entire history. In the 1993 election, the Liberals promised to abolish it and replace it. Canadians went to the polls in great numbers, believing this to be the case. Six years later, it is still there. Why?

The answer is obvious. It has proven to be what it is — an upfront, visible and socially progressive tax. It has also been beneficial to our economy, especially to our exports, and it has added significantly to the revenues of the government. The old 13.5 per cent Manufacturers Sales Tax, which we abolished, was a hidden tax and a hindrance to exports. The 7 per cent GST, as a tax on consumption, comes off at the border on exports. It is one of the main reasons, along with free trade, that Canada has enjoyed an export boom throughout the 1990s.

The Canada-U.S. Free Trade Agreement, the NAFTA, the GST, privatization, deregulation, the abolition of the National Energy Program and the replacement of the Foreign Investment Review Agency by Investment Canada were all part of the restructuring and modernizing of the Canadian economy. On the fiscal side, deficit reduction and the downsizing of government began in 1984, not 1994, as some would have you believe.

The Hon. the Speaker: Honourable Senator LeBreton, I regret having to interrupt you, but your time for speaking has expired.

Senator LeBreton: Honourable senators, may I have leave to continue?

The Hon. the Speaker: Is it agreed?

Hon. Senators: Agreed.

Senator LeBreton: All these courageous policies have two common characteristics. The Progressive Conservative government brought them in, and the Liberals fought and voted against every single one of them.

By the time Mr. Mulroney's government left office in June 1993, employment in Canada was up 1.4 million jobs from the September 1984 level. The prime rate was at 6 per cent, the lowest in 20 years. Our inflation rate was 1.5 per cent, the lowest in 30 years. The United Nations had just reported that in terms of quality of life, Canada was the number one nation in the world. That was the Canada the Liberals and Mr. Chrétien inherited six years ago.

Most important, honourable senators, attitudes have changed. Thanks to our efforts, Canadians were brought around to understanding the importance of deficit reduction, something they were not prepared to face a decade earlier.

• (1630)

A few years ago, Professors Thomas Velk and A.R. Riggs of McGill University, co-directors of the North American Studies Program at McGill, analyzed the economic performance of Canada under all prime ministers since the Second World War. These economic experts compared results from unemployment, inflation, growth, interest rates, value of the dollar, distribution of income, deficit and tax rates. What was their conclusion? I quote directly from their study:

> Mulroney's objective record — in terms of core performance statistics for the Canadian economy — is the best in the past 35 years.

As I indicated at the beginning, all these undeniable facts have been lost in the turbulence of misinformation and the altering of the truth by the formidable propaganda machine known as the Liberal Party of Canada. Liberal spin doctors and friendly lickspittles in the media are now telling the nation how this government courageously eliminated the deficit, turned the economy around and saved the nation. Jean Chrétien and Paul Martin have already ordered their halos.

Central to this thesis is their allegation that in 1993 the new Liberal government inherited an extremely bad economic and fiscal situation. In fact, in a TV debate during the 1997 election campaign, Mr. Chrétien referred to the "disaster" he had inherited. Perhaps Mr. Chrétien was having another of his famous chats with the homeless. Of course, he inherited no such thing. The groundwork had been laid for a strong export-driven recovery. Our policies provoked deep structural change in Canada, from taxes to inflation to trade. They were unpopular but necessary.

Honourable senators, Canadians quite rightly should be happy with these results, but let us give credit, or at least some of it, to whom credit is due. As former prime minister Brian Mulroney once said, "Finance Ministers Michael Wilson and Don Mazankowski planted the garden and Paul Martin is picking the flowers." As a Canadian, I am pleased by that result and do not begrudge Mr. Martin any credit that comes his way. It is indeed a privilege for all of us who serve in Parliament to see hotly contested policies ultimately bring about beneficial results that strengthen the fibre of our nation.

Honourable senators, we told Canadians what they had to know — the truth they needed to know about free trade, NAFTA, the GST, deficit reduction, low inflation, Pearson airport, helicopter purchases, and we even believed in that old parliamentary tradition of ministerial responsibility and accountability. Our economic policies were pilloried in many quarters, but we repeated over and over that if these policies were enacted and sustained over an extended period of time, Canada would be a nation transformed. The deficit would be eliminated, exports would boom, and the economic well-being of Canadians and their families would be enhanced in a non-inflationary climate. We did not promise perfection, just significant progress. I am extremely proud that I and honourable senators on this side were and are such a large component of that significant progress.

Some Hon. Senators: Hear, hear!

Hon. Richard H. Kroft: Honourable senators —

The Hon. the Speaker: Honourable senators, if the Honourable Senator Kroft speaks now, his speech will have the effect of closing debate on the motion.

Senator Kroft: Honourable senators, on October 13, I had the great privilege of moving the Address in reply to the Speech from the Throne. I took that opportunity to speak on things that are important and meaningful to me, to my province and region, and to Canada.

Senator Furey, in his Address in reply to the Speech from the Throne, brought his own perspective from the eastern edge of our country and from his personal experience. In the days since, many senators have participated in the debate and have brought to bear a great range of ideas and insights. It has been a debate in the best traditions of this place.

In my address, I observed the following:

It is the task of the government to listen carefully to all voices, to conduct its own studies and evaluations and, in the end, to determine a course of action. It is on that course of action and on the effectiveness of its execution that the government will be judged. More important, it is on the quality of those decisions and actions of government that the future well-being of Canada and individual Canadians will depend.

Honourable senators, the government has now heard the voices from this chamber and has the benefit of our guidance. With that, if there are no other speakers, I am pleased to move the motion standing in my name.

Motion agreed to, on division, and Address in reply to the Speech from the Throne adopted.

On motion of the Honourable Senator Hays, ordered that the Address be engrossed and presented to Her Excellency the Governor General by the Honourable the Speaker.

SPEECH FROM THE THRONE

ADDRESS IN REPLY—MOTION FOR TERMINATION OF DEBATE ON EIGHTH SITTING DAY—ORDER WITHDRAWN

On the Order:

Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Mercier:

That the proceedings on the Order of the Day for resuming the debate on the motion for an Address in reply to Her Excellency the Governor General's Speech from the Throne addressed to both Houses of Parliament be concluded on the eighth sitting day on which the order is debated;

And on the motion in amendment of the Honourable Senator Kinsella, seconded by the Honourable Senator DeWare, that the motion be not now adopted but that it be amended by striking out the word "eighth" and substituting the word "fourteenth".

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I rise to request leave that Motion No. 2 under Government Business be deleted from the Orders of the Day as it is no longer relevant.

The Hon. the Speaker: Honourable senators, first, we need the agreement of the mover of the amendment, as that is the motion presently before us.

Does the mover wish to withdraw the amendment?

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, as the past two procedures have indicated, this matter has been overtaken. Therefore, not only do I concur, but I suggest that it is a good move.

The Hon. the Speaker: The Honourable Senator Kinsella has requested that his amendment be withdrawn. Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: The Honourable Senator Hays has requested that his motion be withdrawn. Is it agreed, honourable senators?

Hon. Senators: Agreed.

Order withdrawn.

PUBLIC SERVICE WHISTLE-BLOWING BILL

SECOND READING—DEBATE ADJOURNED

Hon. Noël A. Kinsella (Deputy Leader of the Opposition) moved the second reading of Bill S-13, to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistle-blowers.

He said: Honourable senators, Bill S-13 is a bill with a short title. It is the Public Service Whistle-blowing bill. I invite honourable senators to take a few moments to reflect on this bill, and I will attempt to identify some of its key principles.

Fundamentally, Bill S-13 is situated within the environment of public service values and ethics. The bill speaks to a contemporary, professional public service that we are fortunate to have here in Canada. Indeed, it is my submission that the Public Service of Canada is second to none in the world.

A report entitled "A Strong Foundation" examined public service values and ethics. This is the report of a task force established by the Clerk of the Privy Council a few years ago and chaired by the late John Tait, a former colleague and deputy minister of justice. The purpose of "A Strong Foundation" was to help the public service think about and, in some cases, rediscover and understand its basic values and recommit to and act on those values in all its work. I commend this publication to honourable senators for reading. Some of the issues and problems identified as concerns of public servants of Canada include evolving conventions about accountability; tension between old values and new; ethical challenges emerging from new service and management approaches in the public service; and leadership and people management in this time of great change.

Bill S-13 attempts to cast the need to provide for a framework to deal with the matter of whistle-blowing within this new context of ethics and values as a strong foundation of our Canadian public service. The whistle-blowing framework of Bill S-13 builds on the ethics regime which, frankly and happily, is growing within our public service.

• (1640)

As indicated at page 54 of the Tait report, an ethics regime:

> — is not a single initiative but rather a comprehensive series of initiatives, mutually supporting and complementing one another.

Further, at page 55, we find the Tait report observing:

> One element of an ethics regime to which we wish to give particular importance is the establishment within public service organizations of suitable recourse mechanisms, counsellors, or ombudsmen for public servants who may feel that they or others are in potential conflicts of interest or other ethical difficulties, or may feel that they are under pressure or have been asked to perform actions that are unethical or contrary to public service values and to the public interest. One refrain that we have heard from public servants is that there is no point in asking them to uphold public service values or to maintain high ethical standards in public service, if we do not give them the tools to do so. One of the essential tools they require is some accessible person to whom they can turn, in confidence, to seek advice and guidance, to express concern about instructions given, or to report a serious breach of public service ethics. Such a function must have sufficient seniority, independence and authority to carry out the duties effectively and to protect the identity and positions of those who have recourse to it. There must be means, consistent with public service values, for public servants to express concern about actions that are potentially illegal, unethical or inconsistent with public service values, and to have those concerns acted upon in a fair and impartial manner.

Honourable senators, Bill S-13 is designed to build on this desire that is expressed by the public service itself, that is, to operate as a first-class service. The bill is built on a framework of four pillars. The first is to keep responsibility for an ethical and values-based management of departments and agencies at the unit level, whereby solutions to problems would involve the managers and, ultimately, the responsible minister at the departmental level. The second pillar speaks to the cross-service and public interest need. The third is the provision of a process to deal with individual cases of whistle-blowing, a process that operates on the public interest basis and removes from the shoulders of the individual public servant the strain and stress of dealing with wrongdoing and having it dealt with by one of the three commissioners of the Public Service Commission of Canada. The fourth pillar of the bill is protection for the whistle-blower. Thus, there are in Bill S-13 anti-retaliation provisions.

Honourable senators, the model is one which, first, protects the public interest in general; second, enriches the public service as a first-class institution; third, provides for accountability and solutions at the unit level; and, fourth, protects the public servant. Thus, we have provided in clause 2 of Bill S-13 what I call the triple "P" approach. The first of the three "Ps" is for promotion. Clause 2(*a*) provides that we wish to place a focus on education, and that persons working in the public service workplace will have the opportunity to be exposed to a reflection on ethics and values in the public service.

The second "P" is for process. Clause 2(*b*) provides for protection of the public interest by providing a means for employees of the public service to make allegations of wrongful acts or omissions in the workplace, and to make those allegations in confidence to an independent commissioner, one of the three commissioners of the Public Service Commission. It will then be on the shoulders of that commissioner, in the public interest, to investigate the allegations and to have the situation dealt with. The Public Service Commission makes an annual report to Parliament on its activities. The bill provides for a section of the annual report of the Public Service Commission to focus on the work done pursuant to this bill.

Finally, the third "P" is for protection. Clause 2(*c*) indicates that the purpose of the bill is to protect employees of the public service from retaliation for having made or for proposing to make, in good faith, allegations of wrongdoing and submitting these allegations to this special commission.

Honourable senators will find the framework of the bill to be straightforward and clear. The public service itself has been working in this area of ethics and values. The record is pretty darn good in terms of the high level of professionalism that is manifested by our professional public service, serving successive and varying governments over the years. We should be proud of the Public Service of Canada.

This issue of whistle-blowing is a reality with which other jurisdictions have attempted to deal. Successive governments have indicated their interest in trying to provide for appropriate whistle-blowing legislation. The model that we are proposing in this bill, which, hopefully, the appropriate Senate committee will invite representations on, is simply to designate one of the three commissioners of the Public Service Commission of Canada as a public interest commissioner to whom an individual public servant observing illegal activity or wrongdoing would take his or her case or allegation. The carriage of the case would be placed on the shoulders of the Public Interest Commissioner so that the individual public servant would not be left with that task, along with the anxiety and stress that it entails.

• (1650)

It is in the public interest that we have no improper activity. That is why the bill envisages the investigation being done by a commissioner of the Public Service Commission itself. Sometimes cases are frivolous or vexatious. They would be dismissed at the first instance so that there would no waste of time of both the individual and the department or the agency in question.

Those cases which are bona fide would be investigated, and the department would be visited by the commissioner. The department would then be invited to manage itself in such a way as to deal with issues of wrongdoing, because it is terribly important to keep the departments or the agencies themselves operating and managing on the basis of ethics and values which are the foundation of our public service.

This is not a top-down kind of model. Rather, it tries to keep the accountability and the responsibility at the operating level. However, should the Public Interest Commissioner who is dealing with a case of wrongdoing determine that he or she is not receiving satisfactory response at the agency or departmental level, he or she would be able to approach the minister, who is, ultimately, accountable, and the minister would attend to the rectification of the problem. If that fails, then the commissioner would make a report to Parliament. Therefore, at the end of the day, under our Westminster system, it would be Parliament itself who would hold accountable the minister in question.

At the same time as we have provided for this kind of mechanism, it is important that the promotional and the educational functions continue to be carried out by the Public Service Commission.

Finally, it was necessary to provide for protection of the statutory requirement for confidentiality. That must be maintained from the moment the individual public servant files a complaint with the commissioner, through to the prohibition of retaliatory actions from anyone who has filed a complaint with the commissioner.

Honourable senators, those are the principles of the bill. That is the framework it encompasses. I invite my colleagues to participate in this debate.

On motion of Senator Finestone, debate adjourned.

ROYAL ASSENT BILL

SECOND READING—MOTION IN AMENDMENT—SPEAKER'S RULING

On the Order:

> Resuming debate on the motion of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Kinsella, for the second reading of Bill S-7, respecting the declaration of Royal Assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament,
>
> And on the motion in amendment of the Honourable Senator Cools, seconded by the Honourable Senator Sparrow, that the Bill be not now read a second time but be read a second time when its sponsor fulfils the condition required by the law of Parliament that is necessary and preliminary to the passage in Parliament of a private member's bill altering the Royal Prerogative, that preliminary condition being the signification of Her Majesty's Royal Consent to Parliament's consideration of Her Majesty's interests in Bill S-7's proposed limitation and alteration to the manner, form, and style of Her Majesty's Royal Assent in Canada, which is simultaneously an alteration to the constitution of the Senate.—(*Speaker's Ruling*).

The Hon. the Speaker: Honourable senators, if it is agreeable, I am prepared to proceed with my ruling now.

Hon. Senators: Agreed.

The Hon. the Speaker: On December 1, during debate on the second reading of Bill S-7, respecting the declaration of Royal Assent by the Governor General in the Queen's name, Senator Cools proposed an amendment. This amendment would have the effect of postponing the second reading of the bill until its sponsor, Senator Lynch-Staunton, obtains the signification of Royal Consent. Senator Cools maintained this was necessary, given that the bill, in her view, affects the Royal Prerogative.

[*Translation*]

Shortly thereafter, Senator Lynch-Staunton rose on a point of order to challenge the amendment. He claimed that Bill S-7 does not affect the Royal Prerogative and, consequently, that the amendment goes beyond the content of the bill and is out of order. Senator Carstairs and then Senator Kinsella spoke in support of Senator Lynch-Staunton's basic position. Senator Carstairs noted that the bill is intended to provide an alternative to the current ceremony of Royal Assent, not to eliminate it as an essential requirement to the enactment of bills passed by Parliament. For his part, Senator Kinsella suggested that the amendment seemed to be imposing an unnecessary restriction on the ability of any Senator to bring forward legislation.

[*English*]

In reply to these objections, Senator Cools denied that her amendment sought to impose any limitation on anyone. In this instance, however, Senator Cools maintained that, since the bill would affect the Royal Prerogative by altering the sovereign's powers with respect to Royal Assent, some evidence must be provided that the Governor General or Her Majesty the Queen

consent to the proposal contained in Bill S-7. As an example, Senator Cools cited debate that occurred in the United Kingdom in 1911 during consideration of the Parliament Act which provided authority for Parliament to adopt legislation bypassing the House of Lords.

[*Translation*]

Since this point of order was raised, I have studied the matter and I am now prepared to rule on it. Let me begin by stating that, to my mind, there seem to be two distinct parts to this point of order. One, of course, has to do with the matter of the Royal Prerogative. The second relates to the kind of amendments that are permitted at second reading. I will begin with the second element first.

[*English*]

Second reading involves a decision of the Senate on the principle of the bill, whether the Senate accepts its basic intent or not. This focus on the bill's principle has led to a practice that limits the kind of amendments that can be moved at this stage. Leaving aside the motion for the previous question, which is a superseding motion, there are basically two kinds of amendments that are permitted at second reading: the hoist amendment and the reasoned amendment.

[*Translation*]

The hoist amendment seeks to postpone the consideration of a bill by proposing that the bill be read "this day six (or three) months hence." The form of the motion is well established; it was developed in the British Parliament more than two centuries ago to circumvent the narrow meaning of the word "now" in the standard motion for second reading "That such and such a bill be now read a second time." Nowadays, it is more often used to prolong debate since it allows those who have already spoken on the main motion an opportunity to speak again.

A reasoned amendment, on the other hand, provides the means to put on the record, in the form of a motion, a statement or explanation as to why a bill should not receive second reading. By practice, as is explained in the 6th Edition of *Beauchesne's Parliamentary Rules & Forms* at citation 670, on page 200, reasoned amendments fall into one of several categories. Reasoned amendments must be declaratory of some principle adverse to the principles or policies contained in the bill or they may express opinions as to the circumstances connected with the introduction or prosecution of the bill, or otherwise oppose its progress. Furthermore, citation 671(3), on page 201, suggests that the reasoned amendment should not attach conditions to the second reading.

[*English*]

In the present case, the motion in amendment proposed by Senator Cools does not meet the requirements to be considered a reasoned amendment. This is because it clearly establishes a condition to be met prior to second reading. The amendment that Senator Cools proposed on December 1 reads as follows:

> That Bill S-7 be not now read a second time but be read a second time when the sponsor fulfils the condition required by the law of Parliament that is necessary and preliminary to the passage in Parliament of a private member's bill altering the Royal Prerogative, that preliminary condition being the signification of Her Majesty's Royal Consent to Parliament's consideration of Her Majesty's interests in Bill S-7's proposed limitation and alteration to the manner, form, and style of Her Majesty's Royal Assent in Canada, which is simultaneously an alteration to the Constitution of the Senate.

• (1700)

Accordingly, the motion in amendment is not in order and cannot be put as an amendment to the second reading of Bill S-7.

This, however, does not settle the matter entirely. As I indicated earlier, there are two aspects to this point of order. I have dealt with the reasoned amendment. It is now necessary to address the more substantive question concerning the possible need to signify Royal Consent.

[*Translation*]

As Senator Cools stated in her intervention, Royal Consent is required whenever a bill proposes to affect either the prerogative of the Crown, its hereditary revenues, personal property or interests. With respect to this case, there is no doubt that the only issue involved with Bill S-7 is that of the Royal Prerogative. The bill contains no provisions relating to the personal property or interests of the Queen. The question to be answered then is whether a bill providing an alternative to the ceremony of Royal Assent touches upon a prerogative power of the Crown.

[*English*]

In making the case, Senator Cools referred to comments made in the United Kingdom Parliament in 1911. I am not altogether certain how useful this case is as a guide to the present circumstances. The remarks of Lord Lansdowne indicated the need to obtain Royal Consent for bills affecting the Royal Prerogative, but do not provide any indication as to the nature and extent of the Royal Prerogative, particularly with respect to Canada's constitutional practices. However, given the importance of the issue, I decided to look into it further. I felt compelled to do this because of the possible consequences. According to Beauchesne, the question of Royal Consent can be highly relevant to the final disposition of a bill. At paragraph 726(2) on page 213 of the 6th edition, it is stated that the omission of Royal Consent "when it is required renders the proceeding on the passage of a bill null and void."

[*Translation*]

As many honourable senators will know, this is not the first time that a Royal Assent bill has been debated in the Senate. The Leader of the Opposition sponsored an identical bill in the previous session. In fact, that bill was based on one that had been presented to the Senate some years before by the leader of the government at the time, Senator Murray. The bill gave legislative expression to a proposal that had been advanced some years before by Senator Frith, who moved an inquiry on the subject of Royal Assent in 1983 that was subsequently followed up by a committee review. In 1985, the Committee on Standing Rules and Orders presented a report on the practice of Royal Assent that included a recommendation to draft a resolution for a joint Address to the Governor General seeking her approval to modify the Royal Assent ceremony. However, the report was never adopted by the Senate.

[*English*]

In my research, I also noted that when the British Parliament adopted a Royal Assent Act in 1967, Royal Consent was signified in both the House of Lords and the House of Commons prior to its passage. In fact, Royal Consent was announced before second reading, as Senator Cools has suggested be done with Bill S-7. On this point, Beauchesne notes at paragraph 726(2) that "Royal Consent is generally given at the earliest stage of debate."

In the next paragraph, Beauchesne goes on to explain at paragraph 727(1) that "consent may be given at any stage of a bill before final passage; though in the House it is generally signified on the motion for second reading."

Furthermore, it seems that the practice of signifying Royal Consent in Canada has almost never involved both the Senate and the House of Commons. In the numerous instances when the Royal Consent was sought and signified, I noted it was usually signified in the House of Commons and rarely in the Senate. Indeed, I found only one instance where Royal Consent was signified in this chamber. It happened as long ago as 1951, just prior to second reading of Bill 192, to amend the Petition of Right Act.

[*Translation*]

This Canadian practice of giving Royal Consent in the House of Commons was noted in the parliamentary authority, *Parliamentary Procedure and Practice in the Dominion of Canada*, by Sir John Bourinot as long ago as 1884, when the first edition appeared. Indeed, an example dating from 1886 contained in the fourth edition of 1916 records an example of Royal Consent being signified to a Senate amendment to a Commons private bill in the House of Commons rather than the Senate. This then seems to be an accepted departure from what occurs in Westminster.

[*English*]

The question is what to do in the present circumstances. As I have already explained, the issue cannot be addressed in the form of the reasoned amendment that Senator Cools proposed. Perhaps it would have been more appropriate to raise the matter as a point of order rather than as an amendment to the second reading motion. Nonetheless, even as a point of order, I have heard nothing that would compel me as Speaker to delay the debate on second reading of Bill S-7. Royal Consent might be necessary; yet, based on the Canadian precedents, it would appear that there is no binding requirement that Royal Consent be signified in this chamber.

Accordingly, I am prepared to rule that the amendment is out of order and that debate on the second reading of Bill S-7 should be allowed to continue. I would suggest, however, that if this bill receives second reading, the issue of Royal Consent be studied by the committee to which it is referred as part of its examination.

On motion of Senator Poulin, debate adjourned.

PARLIAMENT OF CANADA ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Callbeck, for the second reading of Bill S-5, to amend the Parliament of Canada Act (Parliamentary Poet Laureate).—(*Honourable Senator Kinsella*).

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise to make a few comments in the debate on the principle of Bill S-5, to amend the Parliament of Canada Act (Parliamentary Poet Laureate).

At the outset, honourable senators, I wish to indicate my support of the principle of the bill. I congratulate Senator Grafstein for bringing the matter before us. Traditionally, in Great Britain, Poet Laureate is the title conferred by the monarch on a poet whose duty it is to write commemorative odes and verse. It is an outgrowth of the medieval custom of having versifiers and minstrels in the King's retinue and of the later royal patronage of poets such as Chaucer and Spencer.

Ben Jonson seems to have had what amounted to a laureateship from Charles I in 1617, but the present title, adopted from the Greek and Roman custom of crowning with a wreath of laurel, was first given to John Dryden in 1670. Dryden, by the way, honourable senators, was beaten up on one occasion by political opponents for writing a pamphlet they did not like — a dangerous time even for a poet.

In recent years, the ceremonial duties of the position have largely been eliminated. Dryden's immediate successors were Thomas Shadwell, Nahum Tate, Nicholas Rowe, Laurence Eusden, Colley Cibber, William Whitehead, Thomas Warton, Henry Pye, and Robert Southey. Most of these poets, honourable senators, the successors of Jonson and Dryden, were considered hacks and are now forgotten and read by no one. If we do remember Shadwell and Colley Cibber, it is only because Alexander Pope put them in his great and masterful satire, "The Dunciad." William Wordsworth, 1843 to 1850, and Alfred, Lord Tennyson, 1850 to 1892, were genuine and deserving candidates — although arguably none of their great works was written while they held the post of Poet Laureate. Alfred Austin, 1892 to 1913, is forgotten, and deservedly so in the minds of some students of English. Robert Bridges, 1913 to 1930, is remembered only because he had the wisdom not to destroy Gerard Manley Hopkins' poetry when the latter asked him to do so. Bridges published Hopkins, and we still thank him for that, but we do not read or teach his verse. John Masefield, 1930 to 1967, was popular in his time but is now forgotten. Cecil Day-Lewis, 1968 to 1972, wrote some fine poems that still live, but he is best known today as the father of the actor Daniel Day-Lewis. John Betjeman's — 1972 to 1984 — stocks have not recovered, but he was a good critic of architecture.

• (1710)

Ted Hughes, 1984-1998, may he rest in peace, was the best Poet Laureate since Tennyson. While he was not as good a poet as the great Victorian, he was probably a better Poet Laureate. Hughes became Poet Laureate only after Philip Larkin, considered by many to be Britain's best poet of the last 50 years, rejected it. Though widely admired as a poet, Hughes was faulted to the point of ridicule for much of the verse he composed while holding the position. Hughes held the post for 14 years, until his death in October of 1998. The job as Hughes knew it was a lifetime appointment underwritten by a case of sherry and £100. I hope that we can do better than that, Senator Grafstein.

Andrew Motion, the new Poet Laureate of Britain, was chosen by Prime Minister Tony Blair. Motion's appointment would be for 10 years, and there was an annual payment of £5,000, which is Cdn. $8,100. Motion was seen as the most conventional of the many mooted candidates, and his selection put to rest rumours alarming to traditionalists that Tony Blair, the modernity-minded Prime Minister, might bypass known writers in favour of a "people's poet." Sir Paul McCartney — yes, of the Beatles — was one name mentioned in that context.

The Poet Laureate in Britain is still approved by the Queen but chosen from a short list by the Prime Minister. It is understood to necessitate writing verse about the royal family and on grand national and ceremonial occasions. Where many poets mentioned as candidates for the post balked at this requirement, Motion had demonstrated his willingness by writing, unbidden, a poem about the death of the Princess of Wales.

The Glasgow poet Carol Ann Duffy said that if she had been chosen Poet Laureate, she would refuse to celebrate in verse any royal events, such as the marriage of Prince Edward and Sophie Rhys-Jones. She told *The Guardian*:

> No self-respecting poet should have to. There are so many more interesting things to do with the job.

Could this be a dangerous ground, one might ask, in the Canadian context, given the diversity of our country? One would wonder whether a Quebec poet like Gaston Miron, for example, would be happy about writing a poem for the House of Windsor. Perhaps we could eliminate the necessity of writing poems about the state. I think it would be a step in the right direction. The committee might wish to examine that proposition. This is the route that the Americans have successfully chosen.

When the last Poet Laureate died in Britain, numerous other poets let it be known that they did not want to be considered for the post at all. The reason was that most of them did not want to take the post of Poet Laureate because of this tradition of having to write poetry for the state. The late Irish poet Michael Hartnett once said that the "act of poetry is a rebel act." The poet Paul Durcan became very close friends with Mary Robinson and composed a poem for her inauguration as President of Eire, but Paul is the exception rather than the rule. Seamus Heaney has spent a lifetime writing poems that do not acknowledge the state — for obvious reasons, of course. When a reporter at *The New York Times* called Craig Raine, an Oxford poet, to ask if he was interested in being the next British Poet Laureate, he exclaimed, "Oh God, no," and hung up the phone.

Andrew Motion, who had made it widely known that he would like the job, said that he saw the post as "an extremely complex and interesting challenge for a poet." He has said:

> I think that I want to honour the traditional responsibilities, to write poems about royal occasions and so on, but I am also very keen to diversify the job, or at least make those poems part of the wider national issues that I also want to write about.

He said he particularly wanted to promote poetry in schools. He vowed that he would not write poems that are "merely sycophantic or sentimental."

Motion lives in Islington, the North London neighbourhood where Blair lived before moving to 10 Downing Street. He studied at Oxford and holds the creative writing professorship at the University of East Anglia in Norwich. He has published nine volumes of verse, written a well-regarded biography of Keats, and won the Whitbread Prize for his life of Larkin, a poet who declined the laureate position.

Though the post itself is not held in universally high esteem, the race to see who will get it stirs broad interest. The official odds are quoted at William Hill, Britain's biggest betting agency. Besides Ms Duffy, candidates making it onto the agency's list included Seamus Heaney, Derek Walcott, Wendy Cope, Benjamin Zephaniah, James Fenton, Tom Paulin and Geoffrey Hill.

In an editorial welcoming the choice of Motion, *The Times of London* called him:

> ...a poet of quiet understanding, gentle humanity and lyric force. His is a very British body of work, bound by sea and salt flats, personal loss and the national past.

Honourable senators, I am mindful of the time, but I did want to point out that the position of Poet Consultant to the Library of Congress is the American counterpart. It was founded in 1938 as the Chair in Poetry, and then in 1984 it became the Consultant. Poet Laureates of the United States include great writers like Robert Penn Warren, Richard Wilbur, Howard Nemerov, Mark Strand, Joseph Brodsky, Mona Van Duyn, Rita Dove, Robert Hass and Robert Pinsky. In 1984, Robert Penn Warren was named the first Poet Consultant of the United States, an annual position chosen by the Library of Congress. The appointment is for a one-year term but is renewable.

Many, it is suggested, may tend to agree that Americans have had more success than the British with their Poet Laureate, primarily because they have made the position much more proactive. They have given the post some teeth and connected it with literacy and cultural programs throughout the United States. There is also an attempt to give the position a higher profile by having the Poet Laureate appear on public television and radio, not so much to read his or her own poetry but to read the verse of famous American poets both present and past. This, I think, might be a far better project than the poet being forced to compose verses for state occasions.

Honourable senators, in conclusion, I repeat that I think that Bill S-5 is a good idea deserving of careful study. It would be helpful to consider whether the title "Poet Laureate" is the most appropriate one. The Americans, for example, call their laureate the "Poet Consultant to the Library of Congress." Some Canadian poets with whom I have consulted in preparing these notes suggested that less colonial and more sensitive or culturally neutral titles are "Poet in Residence at the Parliamentary Library" or "Parliamentary Poet in Residence at the National Library."

Others find the language of Bill S-5 to be from an older and somewhat outdated paradigm. The committee that studies this bill in detail may wish to reflect on this consideration. The committee would also need to consider the nature of the proposed selection committee. It may be helpful to have a poet on the committee. Reference might also be made to poet organizations such as the League of Canadian Poets, the Writers Union of Canada, the Canadian Authors Association, the Regional Writers Association and others.

• (1720)

Honourable senators, I am confident that Bill S-5 provides the opportunity for developing a uniquely Canadian model that could be very beneficial for the arts community and for all Canadians. The writing community will be supportive of this initiative, I believe, and all Canadians will support this idea if it is developed and presented as something designed within the Canadian context.

[*Translation*]

Hon. Eymard G. Corbin: Honourable senators, I wish to inform the Senate that I intend to make a contribution to the debate, but later. Perhaps Senator Hays would like to adjourn the debate.

On motion of Senator Hays, debate adjourned.

[*English*]

IMMIGRATION ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Gerry St. Germain, for Senator Ghitter, moved the second reading of Bill S-8, to amend the Immigration Act.—(*Honourable Senator Ghitter*).

He said: Honourable senators, I rise today to begin the second reading debate on Bill S- 8, to amend the Immigration Act, introduced by my colleague from Western Canada Senator Ron Ghitter.

One of the positive features about our rules in the Senate is the system established for the introduction and processing of senators' public bills. When I served in the other place — and I know virtually the same rules apply now — in order for a private member's bill to be debated at second reading, it was required to progress through a number of filters. For a private member's bill to receive second reading and be referred to a committee for study is almost unheard of in the other place.

This bill is concise, to the point and is an easy read. For those who are interested in the issue, I strongly urge them to get a copy of the bill. I am sure they already have done so. It is my hope that, after some debate at second reading, Bill S- 8 will be sent to committee for study. I believe it deserves the time spent on it if only to air out the problems inherent in our immigration and refugee system as presently structured.

Bill S-8 will be familiar to those honourable senators who were in this place in the fall of 1987. Bill S-8 is a re-enactment of Bill C-84, which passed through Parliament at that time. Bill C-84 ceased to have effect on July 1, 1989.

Bill S-8 allows the Minister of Immigration to direct that a boat not enter the internal waters of Canada or the territorial sea of Canada and, where a boat has entered, to direct that boat to be escorted to the nearest port. These, of course, are boats that are bringing into Canada or are suspected of bringing into Canada persons in contravention of the Immigration Act or its regulations. Specifically, proposed section 90.1(1) deals with such boats that are between the 12- and 3-mile limits. It allows the Minister of Immigration to make a direction that the boat not enter "the internal waters of Canada or the territorial sea of Canada, as the case may be," when the minister is satisfied that, first, the boat can return to its port of embarkation without endangering the lives of the passengers; and, second, those who are legitimate refugees have been removed from the boat.

If the boat is within the internal waters of Canada or within the three-mile limit and, again, the Minister of Immigration has reasonable grounds to believe that the boat is carrying persons wishing to enter Canada in contravention of the Immigration Act or its regulations, the minister may direct that such boat be escorted to the nearest port for disembarkation of those on board.

This bill was introduced in its original form in 1987 as a reaction to two events. In 1986 and 1987, two separate boatloads of people came to Canada. The first contained Tamils, who landed in Nova Scotia in 1986. The second contained East Indians, who landed in Newfoundland in 1987. Now we are dealing with boatloads of people from China arriving on our West Coast, brought here by racketeers or human smugglers.

This bill, when passed and brought into force by an order of the Governor in Council, will give the Minister of Immigration the power to deal with the situations that are occurring off the coast of British Columbia. It will also send a clear message to human smugglers and to countries that condone and encourage these acts of smuggling that Canada's immigration and refugee laws will be enforced and that Canadians will not tolerate these abuses of our system.

Honourable senators, I was in the other place when the predecessor to Bill S-8 was passed and am aware of the arguments against its passage. Those who opposed the passage of Bill C-84 at the time said it was unworkable. I say we must find a way to make it work. Whether it involves carrying out interviews on the boats at sea before they are turned around or by some other means, we must find a way. It is my belief that Canada must send a clear message to deter those who would profit from the smuggling of human cargo.

As all honourable senators remember, the events of this past summer off the coast of British Columbia made Canadians angry because we felt the most open immigration and refugee system in the world was being abused. Canadians wanted the government to stand up and tell those racketeers who were bringing people to Canada in dilapidated boats that we would not tolerate such behaviour and such abuse of our laws.

The government did nothing. It did not act to deter this behaviour, unfortunately.

The Minister of Immigration announced two weeks ago that she will be introducing a new immigration bill in the other place early in the new year. A discussion of this bill, both in this chamber at second reading and in committee, will help us prepare for the new immigration bill. I look forward to hearing the continued debate on this bill and, hopefully, interventions by those senators who make their homes on either of Canada's coasts.

Honourable senators, this is an insult to those people who are waiting to enter our country as legal immigrants. We, as Canadians, can offer no greater gift to the world than citizenship in our country. The sovereignty of our nation basically lies in our ability to control our borders.

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I move the adjournment of the debate.

Hon. Eymard G. Corbin: Honourable senators, I understand the motion is to adjourn, but I question how we proceeded to this debate in the first place. The motion stands in the name of Senator Ghitter. We are on day 14 and another senator was the first to speak to the item. It is the absolute privilege of the senator who wishes to introduce an item of this nature to have the first go at it.

I do not know if Senator St. Germain was speaking on behalf of Senator Ghitter. I suppose they talked with each other. Was the honourable senator reading Senator Ghitter's speech? Is that what happened?

• (1730)

Senator St. Germain: Honourable senators, not at all. I was speaking on my own behalf. I discussed with Senator Ghitter that I would be speaking to this matter. He deferred to me, allowing me to be the first speaker at second reading. I took this opportunity to do so. If that contravenes the rules of this place, then I am sure that, as others have said, we are the masters of our own house and can rectify the situation.

The Hon. the Speaker: Honourable senators, to clarify, the Honourable Senator St. Germain rose to move the motion for Senator Ghitter. It was moved by the Honourable Senator St. Germain, seconded by the Honourable Senator Cohen, on behalf of Senator Ghitter, that the bill be read the second time. Therefore, the situation is quite in order. Senator St. Germain had the authority of Senator Ghitter to proceed in this manner.

On motion of Senator Hays, debate adjourned.

AIR CANADA

ORDER IN COUNCIL ISSUED PURSUANT TO THE CANADA TRANSPORTATION ACT TO ALLOW DISCUSSIONS ON PRIVATE SECTOR PROPOSAL TO PURCHASE AIRLINE— REPORT OF TRANSPORT AND COMMUNICATIONS COMMITTEE ON STUDY—DEBATE ADJOURNED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Transport and Communications (airline industry restructuring), presented in the Senate on December 9, 1999.—(*Honourable Senator Bacon*)

Hon. Lise Bacon: Honourable senators, I should like to express my gratitude to the deputy chairman of the committee, Senator Forrestall, and to all senators who participated in the work of the committee.

Over the past two months, senators have listened carefully to the testimony of the various groups who appeared before us. We diligently questioned the witnesses who testified before the committee and seriously debated every aspect of the report. I believe we can be proud of the work we have accomplished.

Our report is balanced and reflects what the witnesses told us. Members of the committee should take pride in the fact that, at the end of the day, they agreed to speak with one voice which, once again, reflects on the quality of the work done by the Senate.

[*Translation*]

Through these recommendations, the committee sought to protect the interests of Canadians throughout the country. The members of the Standing Senate Committee on Transport and Communications hope that these recommendations will ensure Canadians, both in the short and long term, effective, safe and affordable air services.

In the coming months, the Canadian skies will undergo considerable changes, and we hope our recommendations will minimize the impact of these changes on the services provided to Canadians. For example, we propose ways to ensure that the dominant air carrier that will emerge following the ongoing restructuring will not unduly increase airfare. We also insisted that sections 64 and 65 of the Canada Transportation Act be strengthened to guarantee that the dominant carrier will continue to provide the services currently being provided to Canadian communities.

Our recommendation on bilingualism, to the effect that all services provided to the public by the dominant carrier and its affiliates be governed by the Official Languages Act, also reflects our will to ensure that the essential services which Canadians should expect are indeed provided.

Like the Competition Bureau, the committee expressed concerns about the possible lack of competition in Canada's airline industry. This is why several of our recommendations reflect in part, or in full, suggestions made by the Competition Bureau.

[*English*]

The committee recommends that the dominant owner carrier commit to surrendering sufficient slots in key locations to allow effective competition. The committee also recommends that the new regulatory framework for slots be established by Transport Canada so that they be surrendered if not used, and that enough slots be available for new entrants.

With the aim of helping small carriers offer effective competition, the committee would ask that the government revise the computer reservation system regulations with a view to eliminating the features which work to the disadvantage of small carriers.

The dominant owner should also be required to allow new entrants to purchase frequent flyer points at a reasonable cost. It should also be required to negotiate interline and code sharing agreements on reasonable terms with new entrants in the domestic market wanting such agreements.

The committee discussed at length the possibility of allowing domestic competition from foreign-owned airlines. The committee rejected the notion of pure cabotage, but showed some interest in allowing modified sixth freedom rights. It thus recommends that the government negotiate with the United States to allow through-ticketing from one point in Canada to another through a U.S. intermediate stop.

[*Translation*]

The committee hopes the Canadian airline industry will flourish. That is why it has agreed in part with the argument of many who think it would be better to raise the limit on individual holdings of Air Canada voting shares.

Some people believe an increase in the concentration of common share ownership would improve financial performance. The committee would like our airline industry to remain in Canadian hands. Senators represent all regions of our vast country, and they are in a position to appreciate the importance of the airline industry in Canada.

In such a large country, the airline industry is not a luxury but a necessity. That is one of the reasons we have decided the limit on individual holdings of voting shares should not be raised beyond 20 per cent. This limit will enable shareholders to better monitor the performance of management, while at the same time limiting the risk of a foreign takeover.

We have also suggested that the government exercise its discretion to raise the limit on maximum foreign ownership in a Canadian airline from 25 per cent up to 49 per cent. This would facilitate access to new capital for small carriers, who could enhance services provided to Canadians.

Also, increasing foreign ownership of Air Canada by more than 25 per cent could jeopardize Canadian control over our main national carrier. Meanwhile, the committee is concerned about the employees who will be affected by the ongoing restructuring.

We urge the government to pressure the dominant carrier to ensure that employees are treated fairly in terms of job security and severance conditions, if it comes to that. Special attention should be given to seniority lists.

Finally, the committee believes that, for the government to efficiently monitor the commitments that it would ask of the dominant carrier, the carrier should account for its operations through a public forum such as hearings held once a year by the Canada Transportation Agency, in cooperation with the Competition Bureau, and that the outcome of such hearings be referred to the House of Commons transport committee and the Standing Senate Committee on Transport and Communications.

[*English*]

Honourable senators, I believe this is a good report. Our goal was not to protect shareholders' interests but to protect all Canadian consumers in all regions of the country.

Members of the committee had heated debates about a number of issues. However, in the end, we managed to produce a balanced report, which is testimony to the quality of our work in the Senate. Once again, it shows how our institution can play its role as an independent parliamentary institution. I salute every senator who attended our meetings and participated in our work. They made this report possible.

Hon. J. Michael Forrestall: Honourable senators, it gives me some pleasure to rise today to participate in the debate on the standing committee's report entitled "Airline Restructuring in Canada." It is hardly an accurate title. However, it does reflect work that must be done by either this chamber or the other chamber before very long.

• (1740)

Honourable senators, I wish to congratulate the chair of the committee, Senator Bacon, for the way in which she conducted both our public hearings and the sessions spent in drafting this report. It is not an easy task to deal with hearings and a report when the scene upon which you are reporting is continuously changing. That is exactly what happened as the committee continued with its work. She did an excellent job, and I congratulate her for it.

[Senator Bacon]

This government has often been criticized for lack of action, of dropping the ball, of not coming up with new ideas, of living on the accomplishment of previous governments and, with its recently tabled legislation on referendums, of creating crisis where none exists. Seriously, however, absolutely nowhere has this lack of action or lack of anticipation of problems been more apparent than in the way that it has dealt with or, in reality, ignored the air transportation industry in Canada. The possibility of a dominant or monopoly carrier had been with us for some time. Only when the so-called "crisis" seemed imminent did the government attempted to act. You may ask: How did it act? It acted by suspending the involvement of the one agency in Canada which really has a grasp of competition issues. I refer here, of course, to the Competition Bureau of Canada. The government suspended its involvement in the merger and subsequently in the takeover led by Onex, which failed to come to fruition.

We must ask ourselves why it acted in this way. The response must be: We just simply do not know. What was the extraordinary disruption of the national transportation system that was imminent? What evidence did the minister have? We do not know. What is more important, not one single witness before us, although all were asked, provided an answer to any of those questions. That is, perhaps, why the committee concluded, as it did, that it was not fully convinced that the use of section 47 of the Canada Transportation Act was appropriate in this situation.

Honourable senators, we could have stopped there. It is interesting to note that some argued that, perhaps, we should have done so. However, I believe, as do many of my colleagues on the committee, that we would have been doing a disservice to Canadians and to the Senate if we had terminated our hearings even though we had decided that the use of section 47 was inappropriate. We would have been ignoring the reality of the changing scene in the area, which was taking place while we met and continues to take place this very day. Policy questions were put to the community by the minister. In our pursuit of an answer to the section 47 issue, we also received evidence on all of these policy matters.

A personal goal of mine in all of this was to remind committee members that the commitment of the previous government, which continues under this government, was to deregulation and not to regulation. The public interest must be protected, but not through the return to a regulatory environment. Our report reflects a conclusion that, for the most part, the Competition Bureau should be the agency involved in protecting the public interest in air travel in Canada. Leave the Canadian Transportation Agency with the task of ensuring the safety of the new entries and new airlines, but leave the monopoly issues that require the protection of the travelling public to the Competition Bureau. This will involve moving from the National Transportation Agency to the Competition Bureau a section of that agency that is the repository of the expertise in this field, but it should be a competition-driven concern.

Honourable senators, my colleagues and myself were impressed with the work done in a short period by the Competition Bureau in this matter. In fact, its report formed a large basis of our report on the airline industry which is now before us. The suggestion to ensure competition made by the bureau is imaginative, demonstrating that it can react quickly to a situation. Quick reaction is vitally necessary to an industry which requires the investment of billions of dollars in capital assets and requires immediacy in determining where the financial resources should be invested, and in what way.

In the time available to the committee, it did a credible job. I will not go into the detail of the recommendations, as in many instances I would only be repeating what we have just heard from the chair. Suffice it to say that we could have dealt in more detail with the divestiture of regional airlines by the monopoly carrier. This is a matter which the Competition Bureau should reflect upon in some depth, as it would be appropriate to require the divestiture of the regional airlines. Here, I am talking about competition.

Canada is a vast country. Some parts are only reachable by air at certain times of the year. We must ensure continued air access to remote parts of this country, no matter what the outcome of the present airline takeover discussions. Of course, I include in the definition of "remote" those areas of Canada with smaller populations such as the interior of British Columbia, the Atlantic provinces, and other areas.

The committee also did not express, as strongly as I would have liked or certainly as strongly as Senator Roberge would have liked, its opposition to the Air Canada-Hamilton proposal. A monopoly carrier running a low-cost, no-frills airline out of a majority city in central Canada surely would doom any future competition from other airlines that may have plans or may have had plans to establish a similar service in that part or any other part of Canada.

Honourable senators, there is no point now in speculating on the curious role played in all of this by the Minister of Transport. It is sufficient to say that it was void of policy. The necessity of invoking section 47 of the CTA, when no evidence existed that we were able to gather, leaves history to deal with his role and with his lack of leadership. What is important now, honourable senators, is that the Minister of Transport act to protect the interests of the travelling public in Canada from price gouging, from withdrawal of service and, above all, from a lowering of safety standards. He could do no better than to pay close attention and implement the recommendations contained in the report of the Standing Senate Committee on Transport and Communications on airline restructuring.

I thank you for your attention. I would ask that the adjournment of the debate stand in the name of Senator Johnson.

On motion of Senator Forrestall, for Senator Johnson, debate adjourned.

[*Translation*]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

SECOND REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Internal Economy, Budgets and Administration (budgetary situation pertaining to committees), presented in the Senate on December 9, 1999.—(*Honourable Senator Rompkey, P.C.*).

Hon. Pierre Claude Nolin: Honourable senators, I move the adoption of the report.

Motion agreed to and report adopted.

[*English*]

• (1750)

THE ESTIMATES, 1999-2000

NATIONAL FINANCE COMMITTEE
AUTHORIZED TO STUDY ESTIMATES

On the Order:

Resuming debate on the motion of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Beaudoin:

That the Standing Senate Committee on National Finance be empowered to examine and report upon the expenditures set out in the Estimates for the fiscal year ending March 31, 2000; and

That the Committee present its report no later than March 31, 2000;

And on the motion in amendment of the Honourable Senator Robichaud, P.C. (*Saint-Louis-de-Kent*), seconded by the Honourable Senator Hervieux-Payette, P.C., that the motion be amended by adding, after the words "Estimates for the fiscal year ending March 31, 2000", the following:

"with the exception of Fisheries and Oceans Votes 1, 5 and 10;

That the Standing Senate Committee on Fisheries be authorized to examine the expenditures set out in the Estimates for Fisheries and Oceans for the fiscal year ending March 31, 2000; and

That the Committee report no later than March 31, 2000.".—(*Honourable Senator Stollery*).

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, Senator Murray is not in the chamber. This order deals with his motion and the amendments moved by Senator Robichaud. We are, however, in a position to deal with this matter now. I would seek guidance from my counterpart as to whether we should deal with it in the absence of Senator Murray.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, we should wait for Senator Murray, since he has some disagreement with Senator Robichaud's amendment that we segregate the fisheries Estimates. We would rather proceed with agreement.

Hon. Fernand Robichaud: We can proceed now**,** honourable senators.

Senator Hays: As I understand the arrangement, it was that Senator Robichaud would withdraw his amendment, with leave, so that Senator Murray's motion could be dealt with. Senator Robichaud will then move, at the first opportunity, presumably tomorrow, a motion that the subject matter of those Main Estimates be referred to the Fisheries Committee as they apply to the Department of Fisheries.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, if we proceed step by step, we will get to where we are heading.

The Hon. the Speaker: I am not quite sure what that means. Is there a request to withdraw the motion in amendment?

[*Translation*]

MOTION IN AMENDMENT WITHDRAWN

Hon. Fernand Robichaud: Honourable senators, I wish to withdraw my motion to amend the motion by Senator Murray. However, I give notice that, when it comes to consideration of the Estimates for the year ending March 31, 2001, we will certainly find a formula whereby the Standing Senate Committee on Fisheries can examine these Estimates. It will be a formula that will meet with the approval of the Standing Senate Committee on National Finance.

Hon. Roch Bolduc: Honourable senators, I should like to express the view of the Standing Senate Committee on National Finance on this matter. I am aware of the issue.

The Hon. the Speaker: Just a minute.

Senator Bolduc: Senator Murray is not present.

The Hon. the Speaker: The Honourable Senator Robichaud, P.C., Saint-Louis-de-Kent, is requesting leave of the Senate to withdraw his motion in amendment. Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion in amendment withdrawn.

The Hon. the Speaker: Honourable senators, we are now back to the motion by Senator Murray. I am prepared to hear from Senator Bolduc.

Senator Bolduc: Honourable senators, I do not wish to take the place of Senator Murray, but I should like to point out that, except for a few exceptions in recent years, the general mandate of the Standing Senate Committee on National Finance has always been to examine all budgetary forecasts, and that is as it should be.

However, if a particular standing committee, such as the Standing Senate Committee on Agriculture and Forestry or another committee, wants to examine the Estimates for the Department of Agriculture, or whatever, there is no problem. However, the mandate should not read "with the exception of." The mandate of the Standing Senate Committee on National Finance should be general and should not be changed. The Standing Senate Committee on National Finance does not necessarily examine all programs. It tries to examine federal public spending from the point of view of administrative policy in particular, so that its mandate cannot be limited. The mandate must be general with respect to votes and forecasts, but this does not prevent a Senate committee from examining programs in the areas of health, fisheries and so forth. This is what Senator Murray would have argued. There has been a long-standing tradition. When I first became a senator, Senator Everett was the Chair of the Standing Senate Committee on National Finance and continued in that position for years. That was how it was understood. There is much wisdom in it.

The Hon. the Speaker: Honourable senators, shall we adjourn the main motion until the next sitting of the Senate?

Senator Bolduc: Honourable senators, I move that the debate be adjourned.

[*English*]

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I think it is in order to put the question. In saying that, I listened to Senator Bolduc. When this order was called, I indicated that I believed that the current matter could be resolved fairly easily by taking the steps that are being taken. As to the future, however, it may be a little more difficult.

I certainly think we should try to accommodate the Department of National Finance, and this is a way that can be done. If the Fisheries Committee examines the expenditures related to the Department of Fisheries and Oceans, that would also accommodate Senator Robichaud's request and would not interfere with what Senator Murray wants.

That is not to say that we are setting a precedent in proceeding in this manner but, for now, it is an appropriate solution to the situation before us. We should proceed with the question.

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

Hon. Senators: Agreed.

Motion agreed to.

CANADA-EUROPE PARLIAMENTARY ASSOCIATION

ORGANIZATION ON SECURITY AND CO-OPERATION IN EUROPE—EIGHTH ANNUAL MEETING OF PARLIAMENTARY ASSEMBLY HELD IN ST. PETERSBURG, RUSSIA—INQUIRY

Hon. Jerahmiel S. Grafstein rose pursuant to notice of November 30, 1999:

> That he will call the attention of the Senate to the report of the Canada-Europe Parliamentary Association to the Eighth Annual Session of the Organization for Security and Co-operation in Europe Parliamentary Assembly (OSCE PA), held in St. Petersburg, Russia, from July 6 to 10, 1999.

He said: Honourable senators, as I sat in the palace at St. Petersburg this past May at the OSCE Parliamentary Assembly, I pondered the fate of foreign affairs in this century. As we approach the new millennium, can one fairly measure briefly and calibrate concisely foreign policy in this last century? What is the work of foreign policy? It is to make the world a safer, more peaceful place. Yet, war predominated foreign policy.

This century started with such high hopes. One hundred years ago, in 1899, from St. Petersburg, Czar Nicholas II of Russia issued a clarion call to the international community for a convention to set international arms limitations and create a new international tribunal to settle disputes between states by consensual arbitration. This, he hoped, would bring peace to this new century, after the 19th century had been racked with war and left over 16 million dead.

Later that year, in 1899, at the czar's urging, an international conference was convoked in The Hague. Indeed, that landmark conference established international arms limitations, especially banning aerial bombs, as well as an international court to arbitrate disputes between states on a consensual basis.

Unhappily, less than one year later, in 1900, this message of hope went unheeded. The race for military supremacy was on. Dreadnought construction, first by Germany and then by England, accelerated the naval arms race. This awesome technology — the Dreadnought — became one of the root causes of World War I. The first decade witnessed both the Russian-Japan War and the Boer War. Early outbreaks of unrest in the Balkans led to the Balkan Wars in 1912 and 1914, then came the infamous Armenian Massacre. This in turn was followed by World War I and a new phrase in the lexicon of death: "World War."

In 1917, the Russian Revolution erupted. While 1918 marked the end of World War I, the Polish-Russian War broke out and the Irish troubles started its ascent. President Woodrow Wilson added two new words of hope to the lexicon of death after World War I: "self-determination."

Meanwhile, unrest in China percolated, leading to the Chinese Civil War throughout the 1930s and 1940s. Inside the USSR in the 1930s, while communist fellow travellers and others in the world looked on, massive purges of untold millions unfolded to sustain the Bolshevik party's monopoly of power. Imitating communism, Nazism and fascism raised their bloody banners which animated the Ethiopian occupation in Africa. The League of Nations, with Canada's help, faltered and floundered. Enter the Spanish War and the clash of communism and fascism, leading to the threshold of the Second World War; first in Europe and then in Asia. We remember the Holocaust. It remains beyond our imagination. We recall the horror of Hiroshima and Nagasaki.

• (1800)

In 1945, the planet appeared exhausted by the stench of war, but there was no pause in the slaughter. Revolutions broke out on the East Asian, African and South American continents in the 1940s. The 1940s became the first host of endless Middle East wars. The 1950s brought us the Korean War and the acceleration of war in Indochina.

The Hon. the Speaker: Honourable Senator Grafstein, I regret to interrupt you, but it is now six o'clock. What is the wish of honourable senators?

Hon. Dan Hays (Deputy Leader of the Government): I move that His Honour not see the clock.

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

Hon. Senators: Agreed.

Senator Grafstein: Honourable senators, at the end of the 1950s, we witnessed the Cuban Revolution, smartly followed by the Chinese Cultural Revolution, the Vietnam War, the Cambodian massacres and the Angolan wars. In the 1960s, the Irish troubles ignited yet again, having persisted for eight decades. The 1970s continued with at least 37 war-like clashes around the globe.

Enter the 1980s, with the Iran-Iraq War, where, by the way, over 1 million people, including boy soldiers, were killed. More people were killed in that war than in all the wars in the Middle East since the beginning of the century — all over a few miles of sand.

The 1980s witnessed the Afghanistan War, the tribal wars in Somalia, the Iraq invasion of Kuwait which led to the Kuwait War, tribal warfare in Rwanda, Nigeria, along the Congo and in the Sudan, and the outbreak of civil war in Indonesia, East Timor, and South and Central America.

Honourable senators, this awesome catalogue of perpetual wars is not exhaustive. However, there was hope — the USSR empire disintegrated.

Then in came the wonderful 1990s, this last decade, after the "Wall" came tumbling down. The sudden breakup of Yugoslavia, triggered by the Western-induced separation of Croatia, led smartly to the wars in Serbia, Bosnia and ultimately Kosovo, and with it the impotency of the United Nations.

As we approach the millennium, it is estimated that there are still over 24 wars raging across the globe, mostly in Africa but some in Eurasia. Does it not seem, looking back, that much of our lives in this century was celebrated by staccato intermezzos between wars? Where were we before the war? What did we do between the wars? What did we do during the Vietnam War, and so on?

Our literature became obsessed with actions and reactions to wars. Why, then, should we note the work of the OSCE and other bodies dedicated to democracy through peaceful means when we cannot help but look backward over this century, pockmarked as it is by death, all in the name of the state or in the defence of a faith?

In 1994, Zbigniew Brezinski, the former security advisor to President Carter, estimated there were 164 million deaths of innocent victims and soldiers in this century. I have estimated that a closer number from these violent outbreaks could reach almost 200 million deaths in this century alone. Every decade has seen an escalating increase in technological violence, in mindless death, dismemberment and wanton destruction.

What then, honourable senators, are we to do? What can we do? Has the human condition advanced in this century? Tolstoy gave some early guidance. He once wrote that all we can hope for is to cut small clearings in the dark forest. This we have attempted to do at the OSCE since the Helsinki Accord some 30 years ago. In that accord, sanctity of state sovereignty was modified by sanctity of the individual.

Fifty-five countries have signed the Helsinki Accord, including Canada and the United States. By this accord, the state, in the eyes of international law, lost its monopoly on violence, yet the residue of state sovereignty remains in the twisted minds of some political elites in the former Yugoslavia, in the Caucasus, in the former USSR, in the Indian subcontinent, in Chechnya and in large spaces of Africa.

In a simply remarkable speech given recently by the Secretary-General of the United Nations, Kofi Annan, he acknowledged the UN's culpability and that of its member states for passing resolutions holding out safe havens, as the UN did in 1995 in Srebrenica, following which the international community stood idly by watching the Serbian slaughter of over 7,000 innocent victims who, with belief and conviction in the words of the international community, raced headlong for protection under the blue and white flag of the United Nations only to be helplessly slaughtered while the TV cameras looked on.

Recently, we reviewed UN resolutions in East Timor, grandly encouraging independence, then noticed that the UN watched idly while one third of the population was slaughtered in the belief that the UN would stand by the words of their resolutions. Did the resolutions of the United Nations exacerbate the East Timor killing field, where over 200,000 people of that impoverished territory were killed by the state might of Indonesia?

Imitation is the best compliment. The NATO action in Kosovo invited Russia to follow suit in Chechnya.

What a shameful history. Five million deaths in the 18th century increased to 16 million deaths in the 19th century, to at least 200 million deaths in the 20th century.

The late Cecil Augustus Wright, the dean of my law school, quoted Mr. Justice Felix Frankfurter at the opening of the University of Toronto Law School in 1967. He said:

> Fragile as reason is, and limited as the law is as the expression of the institutionalized medium of reason, that's all we have standing between us and the tyranny of mere will and the cruelty of unbridled, undisciplined feeling.

Yet, we have learned that even the rule of law is helpless and hopeless without the power to uphold it. That is the one miserable and paradoxical lesson of the 20th century.

Honourable senators, should we not wish for the next millennium that the rule of law respecting the sanctity of the individual becomes the norm rather than the exception, supported by political will and political power? Yet optimism is thin gruel when the United States, the only superpower and the world leader of democracy, refuses to enter into an international agreement to pursue war criminals by an international tribunal, or a conventional arms agreement on mines, or even the ratification of a nuclear treaty. These were auspicious setbacks to world peace in the 1990s. We can only despair and then regroup to see if we can invent, in the next millennium, a better century than that which we inherited and that which we squandered.

Honourable senators, Elie Wiesel, who, before it was popular, lifted the torch of memory in this barbaric century, recently published the second volume of his memoirs entitled *And the Sea is Never Full*. He reminds us that, in Genesis, when Adam fled after having tasted the forbidden fruit, the Lord called out, "Adam, where are you?" If God is everywhere and "all knowing," why would God have to ask where Adam stood? We are told God knew where Adam was. God demanded that Adam confess where Adam stood in this world. Where is your place in history? What have you done with your life? These questions each of us can only answer in our own way.

We must question the work of each organization dedicated to peaceful reconciliation of disputes. We must repeatedly ask ourselves and others the simple question: Where do I stand? Where do we stand? I hope the answer we receive in the next century will be better than the last. May the next generation improve on our work. The threshold from this century is certainly not very high.

Is there a deeper truth we neglect on foreign policy? In 1979, Elaine Pagels, an eminent Professor of Religion at Princeton University, published an elegant exegesis, based on ancient manuscripts written over two millennia ago and discovered in 1945 in the Egyptian desert entitled *The Gnostic Gospels*. Then in 1995, Professor Pagels published a further study entitled *The Origin of Satan*. Perhaps in these two texts lies one answer to the riddle of barbarism buried within the human condition. Professor Pagels illuminates the origins of the demonization of "others" first by a faith and then imitated by the secular state. We have only started to fathom the causes of evil harboured in the hearts of men and women. Does evil lie more deeply etched and indelible within the psyche of those who hold power and yet remain silent, inert or, worse, disinterested in the barbarism committed against others before their very eyes? Is this the curious moral of the last millennium — seeing not doing — and the hope for the next millennium — words to match deeds?

• (1810)

Is there not a surreal paradox in what I have advocated? I argue that war brings death, yet I advocate more war to uphold peace, which brings me to the puzzle of my own conclusions for this century.

Last Sunday, Joseph Heller, the American author of *Catch-22*, died. One critic wrote:

> The theme of *Catch-22* is the total craziness of war, the craziness of all those who submit to it, and the struggle of one man: Yossarian, who knows the difference between sanity and the insanity of the system.

Honourable senators, let me quote ever so briefly from the book *Catch-22*:

> "You mean there's a catch?"
>
> "Sure there's a catch," Doc replied. "Catch-22. Anyone who wants to get out of combat duty isn't really crazy."
>
> There was only one catch and that was Catch-22, which specified that a concern for one's own safety in the face of dangers that were real and immediate was the process of a rational mind.
>
> Orr was crazy and could be grounded. All he had to do was ask; and as soon as he did, he would no longer be crazy and would have to fly more missions. Orr would be crazy to fly more missions and sane if he didn't, but if he was sane he had to fly them. If he flew them he was crazy and didn't have to; but if he didn't want to he was sane and he had to. Yossarian was moved very deeply by the absolute simplicity of this clause of Catch-22 and let out a respectful whistle.
>
> "That's some catch, that Catch-22," he observed. "It's the best there is," Doc agreed.

Honourable senators, this is the best that I can render as we draw to a close of this century and this remarkable millennium.

[*Translation*]

The Hon. the Speaker *pro tempore***:** Honourable senators, if no other senator wishes to speak, I declare the debate on this inquiry, concluded.

ONTARIO

REGIONAL RESTRUCTURING LEGISLATION—REFUSAL TO DECLARE OTTAWA OFFICIALLY BILINGUAL—INQUIRY—DEBATE ADJOURNED

Hon. Marie-P. Poulin, rose pursuant to notice of Thursday, December 9, 1999:

> That she will call the attention of the Senate to the decision of the Government of Ontario not to adopt a recommendation to declare the City of Ottawa bilingual following its proposed restructuration.

She said: Honourable senators, on December 7, I said how surprised and disappointed I was that the linguistic duality of the capital of this bilingual country had not been recognized in the regional restructuring legislation currently under consideration at Queen's Park. On Thursday, December 9, I tabled a notice of inquiry. Why did the Government of Ontario decide not to adopt the recommendation made by its advisor, Glen Shortliffe?

What message are we sending to Canadians everywhere in the country? What respect are we showing for the Canadian Constitution? What kind of recognition are we offering to linguistic minorities in Ontario, in Quebec, in the Atlantic provinces, in the West and in the Far North? What respect are we showing for Ottawa, home of the Parliament of Canada, for the federal public service and for the embassies around the world? Honourable senators, a good number of us would like to speak to the many questions raised by my inquiry, including Senator Jean-Robert Gauthier.

[*English*]

Honourable senators, lend Senator Gauthier your ears. His 40 years of dedication to the fundamental principle of respect for the history of our country and for the unique nature of our two founding cultures will serve us well in this inquiry. Meanwhile, I will keep my substantive remarks for my speech, which will close this inquiry later.

[*Translation*]

Hon. Jean-Robert Gauthier: Honourable senators, I should like to begin by thanking Senator Poulin for her kind words. This is a rather touchy and, to be frank, frustrating subject. As a native of Ottawa who has never left it, I find this debate a painful one. On December 6, the Government of Ontario introduced a bill on the amalgamation of the municipalities in Ottawa-Carleton and other Ontario regions into single cities.

The legislation relating to Ottawa-Carleton is based in large part on the report by Mr. Glen Shortliffe, a provincially appointed consultant hired to study local reform. His report was released on November 26, 1999, and contained numerous recommendations on the new city.

One of these recommendations proposed that the new amalgamated City of Ottawa should be institutionally bilingual. The province chose not to heed this recommendation on bilingualism for the capital of this country. The legislation provides that the city, once organized, will have the authority to determine its own language policies.

At the present time, five cities in the National Capital Region are bilingual, namely, Cumberland, Gloucester, Ottawa, Vanier, and the Regional Municipality of Ottawa-Carleton. In his report on restructuring, Mr. Shortliffe recommends that the City of Ottawa — this is the new official name — be bilingual.

In the preface to his report, he describes this region as a unique mosaic of francophones and anglophones. He justifies his recommendation by stating:

> One of the most important issues raised during public consultations was the question of institutional bilingualism. Over 15 per cent of the new City of Ottawa will be francophone. Ottawa is a unique city in this province and in this country, since it is the capital of Canada.

We know that our nation has two official languages. The national government operates under the Official Languages Act, in both English and French. The national capital must reflect the character of the entire country and must acknowledge the presence within its population of a sizeable francophone minority. Mr. Shortliffe also said:

> I recommend that the enabling statute establish and designate the City of Ottawa as officially bilingual, in French and in English.

I should point out that Mr. Shortliffe explicitly recommended that the new city be designated as bilingual by the Ontario legislature and not by Ottawa's new municipal council. Moreover, Mr. Shortliffe noted that it will be up to the City of Ottawa's senior council to determine the scope and nature of the services that will be available in both official languages of the country.

It is true that under the Constitution of Canada municipal governments are exclusively a provincial jurisdiction. In the case of the Ottawa-Hull region, there is another level of authority established by the federal government called the National Capital Commission — that is the National Capital Region.

In 1958, the Parliament of Canada passed a bill entitled the National Capital Act, which came into effect on February 6, 1959. It provided for the development and improvement of the National Capital Region, an area of 1,800 square miles that includes the city of Ottawa, part of the province of Ontario and part of the province of Quebec. The region surrounding the City of Ottawa is described as the seat of the Government of Canada. The act established the National Capital Commission, which replaced the Federal District Commission. The authority to establish the National Capital Region was given by the residual constitutional power to pass laws for peace, order and good government.

There are a number of options to correct the decision made by the Province of Ontario regarding bilingualism in the national capital. The courts may use them to clarify the issue. I am not a lawyer, but I am convinced that there will be problems. Provincial legislatures have the power to pass legislation concerning municipalities. The Government of Ontario was free to accept or reject Mr. Shortliffe's recommendation. Still, the recent ruling of the Ontario courts regarding the Montfort Hospital could be used as an argument. As you all know, the ruling made by the Divisional Court has been appealed, and I hope that some day we will get justice regarding health services in Ontario.

On November 29, 1999, the Ontario Divisional Court unanimously struck down a directive by the Health Services Restructuring Commission ordering the Montfort Hospital to be closed as a general hospital and turned into a large clinic. The court ruled that the Montfort Hospital was necessary to preserve the francophone community in Ontario. It said the Commission was not at liberty to ignore the constitutional role played by the Montfort Hospital as a truly francophone centre necessary to promote and enhance the Franco-Ontarian identity. The francophone minority in Ontario is a cultural and linguistic entity and it needs its institutions to protect its culture and language from assimilation.

The judges said that the Government of Ontario must respect the principle of minority protection in all its actions. It agreed that francophones have a constitutional right to protection from assimilation as one of the founding cultural communities of Canada and as one of the two official language groups whose rights are entrenched in the constitution. The court ruled:

> ...given the principle of minority protection — particularly, francophone minority protection — is an independent principle underlying the constitution, and one...which is binding upon governments, the Court must intervene, where necessary, to protect against government action which fails to recognize that principle.

There are those who view the ruling handed down in the Montfort Hospital decision as an unacceptable example of militant action by the judiciary. The *National Post* explored this view. If you are interested, read what it had to say, but do not lose your temper. Others feel that it may provide a powerful weapon for the protection of minority rights. Many of the arguments in the decision were based on two recent Supreme Court of Canada rulings, the *Reference on Quebec Secession* and *Beaulac*, where the court upheld the right of a British Columbia man to a bilingual trial.

Yesterday, we learned that the Health Services Restructuring Commission requested authorization to appeal the decision handed down by the Divisional Court in the Montfort Hospital case. The government indicated its unconditional support for such an appeal.

Even if court action did not manage to force the Government of Ontario to designate the new City of Ottawa officially bilingual, it might be useful in terms of public policy. It would certainly have the effect of making the issue better known. If it happened to slow down the amalgamation, pressure would be put on the provincial government. On the other hand, there is a risk that it might trigger opposition and resentment among those who insist that the issue of amalgamation be settled once and for all.

The purpose of the Senate is to represent the country's regions and, particularly, to protect minorities. A motion could be tabled in the Senate calling for the Government of Ontario to designate the new City of Ottawa officially bilingual. It might be worth pointing out in this connection that the Quebec National Assembly has adopted a similar motion. The federal Parliament may not wish to interfere in a clearly provincial matter, but the Government of Ontario shows no hesitation in interfering with federal affairs as far as taxation is concerned. It is making recommendations to us just about every day to lower taxes. If that is not provincial interference, I do not know what it is.

In addition to the fact that there is a sizeable francophone minority in the Ottawa region, the courts are increasingly recognizing the protection of minorities as an underlying principle to the Constitution and one with constitutional value.

The recent decision on the Montfort Hospital raised the question as to whether francophone education is to be replaced by a bilingual institution. The Ottawa amalgamation project, however, concerns more than just the issue of bilingualism. Nevertheless, it is significant that certain of the municipalities to be amalgamated, in particular Vanier, Gloucester and Cumberland, have a sizeable francophone population and a long tradition of official bilingualism. The lack of protection of these communities in the new city of Ottawa raises questions similar to those raised by the Montfort issue.

The new City of Ottawa could always just be left to decide whether it wanted to be declared officially bilingual. It might choose not to, or it might go back on its decision later on. For greater assurance, it would be better for the enabling provincial legislation to address the issue.

The issue of bilingualism can be a highly controversial one, like the David Levine matter and the Montfort Hospital. It would be more responsible on the part of the Government of Ontario to show some leadership and to decide to designate the amalgamated city officially bilingual right from the start.

Mr. Shortliffe's report is carefully drafted and structured. As he says, the francophone and anglophone character of the region is part of its unique mosaic. The Government of Ontario should implement this important recommendation.

In the *Monro* case, back in 1966, the Supreme Court of Canada clearly confirmed the power of the federal government over the National Capital Region. This is something which should distinguish, or which already distinguishes Ottawa from the surrounding region and from the other regions of Ontario.

The Ontario Superior Court also mentioned the four principles that underline our constitution: democracy, federalism, constitutionalism and the protection of minorities, particularly the francophone minority. These principles were established by the Supreme Court of Canada in the cases mentioned above, including the reference on the secession of Quebec and the *Beaulac* case.

The Government of Ontario seems to want to leave it up to Ottawa to designate itself officially bilingual. This may be due to two reasons: the provincial government's refusal to be perceived as being profrancophone and its desire not to open the door to official bilingualism in Ontario, as described in section 133 of the Constitution of Canada.

In conclusion, honourable senators, I insist that the City of Ottawa is unique. It is the national capital of an officially bilingual country. If it is to remain the national capital — and I emphasize the word "if" — and to continue to enjoy the benefits that go with this status, Ottawa should be officially bilingual.

In addition to being the national capital, the City of Ottawa is located on the Quebec-Ontario border. It has a rich francophone history and culture and it has a significant francophone minority.

At a time of increasing tensions about our Confederation and the secession of Quebec, the bilingual character of the national capital takes on a symbolic importance.

In addition to the fact that there is a significant francophone minority in the Ottawa region, the courts increasingly recognize the protection of minorities as an underlying principle of the Constitution and a constitutional value.

I must say that I was pleasantly surprised to read yesterday's editorial in *The Globe and Mail* on this issue. It said: "A bilingual Ottawa a better Canada." *The Globe and Mail* was not as magnanimous regarding the Montfort Hospital.

The future belongs to those who fight. Such is the motto of *Le Droit,* our French daily newspaper in Ontario. That is exactly what we will do.

Hon. Serge Joyal: Honourable senators, Ontario's decision to ignore the recommendation of its own special advisor, Mr. Glen Shortliffe, by not giving bilingual status to the new city resulting from the amalgamation of 11 municipalities in the greater Ottawa area, concerns us all as Canadians.

Not only does this decision annihilate, at the stroke of a pen, the result of several years of fighting, thereby weakening again the Franco-Ontarian minority community, but it also flies in the face of the basic concept of the ideal we have of this country where, in the national capital, the two founding linguistic communities can live in harmony, develop and grow richer from being in contact with each other.

[*English*]

The previous governments of the Honourable John Robarts, Bill Davis, David Peterson and Bob Rae would not have been that insensitive.

[*Translation*]

Without realizing it, the Harris government is attacking the very basis of the Canadian idea. This is a denial of our aspirations which shows a troubling ignorance of the efforts made by those who came before us and marks a return to prejudice and indifference we no longer expect from our leaders.

Ottawa is like no other city. It is the capital of Canada. It is an essential component of the National Capital Region. It is where the most important institutions of our democratic life are found, namely, the Parliament of Canada, the Supreme Court of Canada and the representative of the monarch, who is the head of our constitutional order.

Both the government and the Parliament of Canada work in the country's two official languages. The Constitution of Canada guarantees to it, and the Supreme Court of Canada so eloquently demonstrated it in its decision from August 20, 1998, on the secession of Quebec.

This decision is crucial to understand the principles that guide us and upon which our democracy is based. Need I remind my colleagues that there are four of these principles: federalism, democracy, the constitutionalist approach and the rule of law and last but not least the protection of minority rights. It is to this last principle, the protection of minority rights, that I want to draw your attention.

Honourable senators, I submit that the decision of the Ontario government to strike down the previous bylaws of the cities of Ottawa and Vanier, which recognized the bilingual status of these communities, and to replace them by a piece of legislation that does not provide any such guarantee is, in my view, unconstitutional and contrary to the fundamental principle that protects the rights of all linguistic minorities, as mentioned in the decision handed down by the Supreme Court of Canada on August 20, 1998.

How can we not react to this tactic to revoke the bilingual status of both the cities of Ottawa and Vanier and merge them in a huge entity, while totally disregarding the impact such an initiative would have on the rights of an official language minority?

[Senator Joyal]

Let us consider the precedent being set here: huge mergers are enough to erase 132 years of tenacious battle. We recently had an example with the Montfort Hospital. Merging it with three other hospitals from the Ottawa-Carleton area was enough to make it disappear.

Recently — on November 29 to be exact — in a unanimous decision, three judges of the Ontario Superior Court quashed this decision, finding it to be unconstitutional and contrary to the protection of the Franco-Ontarian minority rights.

Let me remind my colleagues of the fundamental elements of this decision made by the Ontario Court. First, the court recognized that the Montfort Hospital played a role in the Ottawa-Carleton area that also extended to the whole province. It also pointed out that the Franco-Ontarian community constantly had to fight against assimilation in order to survive.

The court added:

[*English*]

• (1830)

> Unlike other minorities, however, the francophone language and culture in Canada — like the English majority language and culture — are entitled to special status under the Canadian Constitution.

That is at page 6 of the judgment.

[*Translation*]

In order to survive, these linguistic communities should be supported by a whole network of institutions that foster their development and that help check assimilation. The judgment further stated:

[*English*]

> The francophone nature of their institution has thus become increasingly important in fulfilling the role of preserving and protecting that culture.

That is at page 7 of the judgment.

[*Translation*]

In other words, institutions giving services in French are vital for this community. The court went on:

[*English*]

> Thus, these institutions must exist in as wide a range of spheres of social activities as possible in order to permit the minority community to develop and maintain its vitality.

> Institutions are also important symbols for the Franco-Ontarian community. They reflect the identity of the group, the French presence in Ontario and in Canada, the French reality in public life, and the strength and vitality of the community.

That is at page 7 of the judgment.

[*Translation*]

The court did recognize the importance of the French language to keep this community alive when it stated:

[*English*]

> The French language is the key cultural component of the Franco-Ontarian community.

That is at page 8 of the judgment.

[*Translation*]

Honourable senators, do you not agree that these characteristics apply to the new city of Ottawa, which will have more than 125,000 French-speaking citizens, representing more than 15 per cent of the population?

The City of Ottawa is the main component of the area under the National Capital Commission, which is itself a bilingual agency.

How will French-speaking Canadians from other areas who live in Ottawa as representatives of their region react to the indifference of the Ontario government to the very symbol of our national life? In the past, mayors of Ottawa did understand this issue.

Why ignore years of linguistic harmony and force francophones to fight again for their rights? Why create more political tensions when we had linguistic peace and mutual respect?

The decision of the Ontario government is inconsistent with the spirit of our Constitution. It is inconsistent with the respect for equality between both communities that is the very foundation of the Canadian pact.

The Superior Court of Ontario has reminded us that the principle of the protection of minority rights:

[*English*]

> ...are not simply "descriptive" of rights. They infuse our Constitution and breathe life into it. Albeit they are unwritten, these underlying principles of the constitution may nonetheless give rise to substantive legal rights, which constitute substantive limitation upon government action; moreover, they are "invested with a powerful normative force and are binding upon courts and governments."

In that regard, the Court was quoting the *Reference re Secession of Quebec* [1998, 2 S.C.R. 217] at pages 248 and 249 of the opinion of the Court.

[*Translation*]

The Supreme Court said that Canada is a constitutional democracy. In simple terms, this means that the constitutionalism principle requires that any government initiative respects the Constitution.

[*English*]

That is found at page 8 of the judgment.

[*Translation*]

The Ontario government legislation which abolishes the bilingual statute of the new municipality of Ottawa...

[*English*]

> ...must be measured against the "minority protection" benchmark, one of the fundamental organizing principles of the constitution. If the conduct is found wanting and in violation of that principle, the reviewing court must intervene...

That is at page 20 of the judgment.

[*Translation*]

Honourable senators, we must draw the conclusions which are obvious. The judgment goes on to state:

[*English*]

> Given that the principle of minority protection — particularly francophone minority protection — is an independent principle underlying the constitution, and one which has a powerful normative force, which is binding upon government, the Court must intervene, where necessary, to protect against government action which fails to recognize that principle.

That is at page 23 of the judgment.

[*Translation*]

Francophones living in Ottawa and Vanier and, to another degree, those living in Cumberland and Gloucester will no longer have the right to be served in French in the new municipality. This will also be true for the other Canadians who are in Ottawa to represent their constituents, their region or, like myself, their senatorial district.

Consequently, we must warn the Ontario government that if it refuses to reconsider the legislation abolishing the bilingual statute for the new municipality of Ottawa, a prosecution will be instituted before the Ontario courts that have jurisdiction over these matters in order to invalidate the provisions of this bill abolishing the recognition of French in the statutes of the new municipality.

• (1840)

Honourable senators, there is something deeply unjust in an amalgamation project that will submerge, in a very large city, a whole community that has had a protected right up to now.

It would be too simple to circumvent in that way principles that are the foundation of our constitutional order.

Our national capital should be a symbol of the French-speaking culture. If it cannot thrive here, in what other Canadian city could it do so? This is an ideal which is the very basis of the special identity of our country. However, if this ideal is never realized once and for all, those who strive for it can never rest.

We can not tolerate the fact that short-sighted provincial politicians who have no national vision take aim at our ideal and refrain from using the means our Constitution affords us. We should not let this initiative become the symbol of the failure of our community, which would not be able to carve its own place in our national capital.

Honourable senators, it is my firm intention to ensure that the Ontario legislation, which does not recognize the rights of the francophone minority in Ottawa and of all Canadians who truly believe in the equality of both official languages, is struck down.

Let us prove that, once a government has granted a status to our community, it can no longer act in a discriminatory way to restore inequality.

Twenty-three years ago, I sued the then minister of transport of my own government in order to have a regulation prohibiting the use of French in the cockpit struck down; also 23 years ago, I sued Air Canada to force the Crown corporation to take whatever steps were necessary to make French a working language in the air transport industry. These two legal actions were well received by the courts of Canada.

Seventeen years ago, as the secretary of state for Canada, I contributed to the development of the Court Challenges Program designed to help official language minorities protect their rights. Again today, we will have to turn to this program in our determination to ensure their survival and development.

The Ontario government has decided to appeal the decision concerning the Montfort Hospital. It saw fit to challenge the legitimacy of that decision. Let us stay the fight all the way to the Supreme Court of Canada, if necessary, where our rights will be ultimately recognized.

[Senator Joyal]

Honourable senators, therefore, I invite Senator Marie-P. Poulin, Senator Jean-Robert Gauthier, as well as the people of Ottawa and all Canadians to join me in turning to the courts to protect their rights and the rights of all those who believe in a country which holds the linguistic equality of French and English to be an important mark of civilization and freedom essential to human dignity.

[*English*]

Hon. Jerahmiel S. Grafstein: Honourable senators, I should like to ask some questions of the Honourable Senator Joyal.

The Hon. the Speaker: Since the speaking time of the Honourable Senator Joyal has expired, is there leave for the honourable senator to continue to answer questions?

Hon. Senators: Agreed.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, it is getting late and there are those who have obligations. We did allow the clock not to be seen. However, let us not get too liberal. I agree that this is an important issue. However, let us be respectful of senators on both sides of this chamber who may have commitments shortly.

Senator Grafstein: Honourable senators, I will keep the comments of the Leader of the Opposition in mind and be as brief as possible.

This is an important issue. We have heard from three francophone senators on the matter. I have a comment and a question for the honourable senator.

Personally, I find it incomprehensible that the bipartisan policy of the Ontario government was not to move forcefully on this issue. Premiers Robarts and Davis of the Conservative Party, Premier Peterson of the Liberal Party and Premier Rae of the NDP would have been upset — and I hope we will hear from them — about this diversion or frolic of the present Government of Ontario. I make that comment as a senator from Metro Toronto.

If the honourable senator proceeds with the court action, as a senator from Metropolitan Toronto, Ontario, I would be glad to join with him in it. It is important that non-francophone senators indicate their displeasure with policies in regions they represent.

My question for Senator Joyal is this: In addition to the court action, has he considered two other actions which might move the matter ahead much more quickly? The first would be to extend the geographical reach of the National Capital Commission, which I assume could be done through a private member's bill in this place. Thus, there would be no question that the geographical territory would be totally bilingual. Second, has he considered the power of the federal government to disallow this legislation?

[*Translation*]

Senator Joyal: Honourable senators, Senator Grafstein's question raises a complex legal issue.

[*English*]

I will use the English phrase. There is an overlap of jurisdiction between the responsibilities of the National Capital Commission and the City of Ottawa, be it the city we know now or the new City of Ottawa. The National Capital Commission does not have jurisdiction to provide municipal services such as fire fighting, policing, recreation facilities, and so on. Those responsibilities are peculiar to a structure of government which, in our Constitution, is called a "municipal government," and those governments are totally under provincial jurisdiction.

According to the National Capital Commission, there are certain responsibilities which come under the urban planning provisions, especially in relation to the federal presence. I refer to administration services and so on, which, to a point, overlap those of the municipal government.

Even if we were to extend the boundaries of the National Capital Commission to cover the whole territory of the new city, the new City of Ottawa would be bound by the legislation in the same way as the existing city.

With regard to the disallowance power, honourable senators will understand that this is a very complex question. The Supreme Court of Canada has ruled that a power does not suffer extinction as long as it is in the Constitution. However, that would be a matter for the Government of Canada to consider if a recommendation were made to the Governor General of Canada in that context, taking into account that that power has not been used for a very long time. If it were used, it would be under exceptional circumstances. It might be a short way to seeing the solution we desire, but other means at our disposal could be as effective. It would be helpful for all Canadians in all the provinces to have a decision on this matter.

I see Senator Lynch-Staunton sitting on the other side of the chamber. He will know that North Hatley and Ayer's Cliff are in the process of a merger in the same context. However, if they merge, North Hatley will lose its status as a bilingual town recognized under paragraph 13(*f*) of the Loi sur la langue française au Québec. They want to merge services. Some 40 per cent of the population of the new town would be English-speaking, which would cause them to lose their bilingual status.

Thus, this is not only a problem for Ottawa but also a problem that is nationwide. In implementing a policy to merge, the minority is reduced to such a low level that there is no justification for the provision of services. This issue is such an important one that it could not be addressed by a disallowance power. It is extremely important in this country that the minority rights of individuals — be it in the English-speaking minority or in the French-speaking minority — are assured. That is to say, once their rights are recognized, those rights cannot, through the back door, be reduced by administrative objectives that are financially sound but, in terms of minority rights, amount to total destruction of those very rights.

• (1850)

On motion of Senator Fraser, debate adjourned.

THE SENATE

MOTION TO UPHOLD ROYAL ASSENT PROCEEDINGS— MOTION STANDS

On Motion No. 43:

That the Senate of Canada affirm its Royal Assent procedure in the Senate described by parliamentary authorities Norman Wilding and Philip Laundy "The Canadian ceremony seems to be that which most closely resembles the original.";

That the Senate uphold the sovereign right of Her Majesty, as enacted in the *Constitution Act 1867*, in the Royal Prerogative of the Royal Assent in respect of parliamentary proceedings and bills considered, voted or passed in both Houses of Parliament;

That the Senate as the House of Her Majesty's Royal Assent affirm its ancient constitutional right as the House of the Parliament, the House for the proceedings of the three estates of Parliament acting together as the One Parliament of Canada;

That the Senate affirm the Law of Parliament, the "lex parliamenti", that ancient law which holds that the Royal Consent is required for Parliament's consideration of any bill or any parliamentary proceeding altering Her Majesty's Royal Prerogative;

That the Senate affirm that the parliamentary procedure for a private member of Parliament to obtain the Royal Consent is a motion for an Address to Her Majesty requesting the same, as distinct from the other forms for obtaining Royal Consent which may be available to the Prime Minister or ministers acting under political ministerial responsibility; and

That the Senate affirm the necessity of the Royal Consent as given by Her Majesty to the consideration of bills affecting the Royal Prerogative, as that Royal Consent which was given by Queen Elizabeth II to the 1967 Royal Assent Bill, which Consent was delivered in the United Kingdom House of Lords by the Lord Chancellor Lord Gardiner at the bill's second reading on March 2, 1967, stating:

> "My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the Royal Assent Bill, has consented to place Her prerogative and interest, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill."

and weeks later, on April 17,1967, in the United Kingdom House of Commons, delivered by the Attorney General Sir Elwyn Jones, stating:

> "I have it in Command from the Queen to acquaint the House that Her Majesty, having been informed of the purport of the Bill, has consented to place Her prerogative and interest, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.
>
> I beg to move, that the Bill be now read a Second time."

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I rise on a point of order. Even though the sponsor of the motion, Senator Cools, is not here, if I do not raise this matter now I may be faulted for not having raised it at the earliest possible occasion. I suggest that the rule of anticipation should be invoked here. In effect, if this motion is allowed to proceed on the Order Paper, it will result in the same subject matter being on the Order Paper twice. One conflicts with the other. The rule of anticipation, as stated in Beauchesne's 6th edition, paragraph 512(1), states:

> The rule of anticipation, a rule which forbids discussion of a matter standing on the *Order Paper* from being forestalled, is dependent upon the same principle as that which forbids the same question from being raised twice within the same session.

I would also draw your attention to paragraph 512(2).

My point of order is that the bill, Bill S-7, is a more effective form of proceeding than the motion to be moved by Senator Cools. Consequently, the debate on Bill S-7 should have precedence and the senator's motion should not be on the Order Paper.

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, Senator Cools is not in the chamber. Therefore, I would beg the indulgence of honourable senators to at least give her an opportunity to be heard on the point of order being raised by Senator Lynch-Staunton. Accordingly, I would suggest that the discussion of the point of order resume tomorrow when she is in the chamber.

The Hon. the Speaker: Honourable senators, there is no motion before the chamber at this point. We have a notice of motion which was given by the Honourable Senator Cools. Therefore, there is nothing on which I can rule.

However, I appreciate the point made by Honourable Senator Lynch-Staunton. I have been considering this situation, but I can do nothing until such time as the motion is actually moved. At that point, I will be pleased to entertain a question concerning the rules.

Motion stands.

The Senate adjourned until Wednesday, December 15, 1999, at 1:30 p.m.

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