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Thursday, April 13, 2000

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Thursday, April 13, 2000

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

Prayers.

SENATORS' STATEMENTS

DENTAL HEALTH MONTH

Hon. Norman K. Atkins: Honourable senators, I rise with pleasure to invite all senators in this chamber to join in "A Celebration of a Smile" and to "Keep Smiling" during the rest of April, as Dental Health Month unfolds in Canada.

Dental Health Month has its origins in a resolution adopted in 1957 by the governing body of the Canadian Dental Association. The Leader of the Government in the Senate will be interested to know that the incoming national president is a dentist from Sydney, Nova Scotia. The resolution was to set up a national dental health week, or day or days. This resolution resulted in the designation of Dental Health Week, which, in the late 1970s, became Dental Health Month.

In the early 1960s, the oral health problems of Canadians were tremendous. Among other factors, there was a shortage of dental health professionals, no dental insurance, and most of Canada's drinking water was not fluoridated. As well, there was less public awareness of, and interest in, oral health. Today, however, we are lucky to have one of the highest levels of oral health and one of the highest standards of oral health care in the world. This is thanks, in large part, to the efforts of Canada's dental health professionals and the organizations that represent them.

Dental Health Month has been very successful in increasing public awareness of the importance of oral health and good oral health care. During April each year, the Canadian Dental Association, provincial dental associations and local dental societies undertake a wide variety of activities. These include information displays and advertisements, lectures on subjects such as oral cancer and mouth care for the elderly, contests and free dental clinics for those in need.

Dental Health Month reminds us how important it is to keep our teeth and gums healthy, whether we are children or seniors. It is a good opportunity for all Canadians to review their oral health care regime and improve it, if necessary, to prevent problems.

Honourable senators, I should like to take this opportunity to congratulate Canada's dental professionals for their dedication to improving the oral health of Canadians and for sponsoring Dental Health Month in April.

[*Translation*]

THE IMPORTANCE OF EDUCATION TO YOUTH

Hon. Rose-Marie Losier-Cool: Honourable senators, today Parliament Hill was the site of many activities important to us parliamentarians and to all Canadians.

Very early this morning, the Speaker of the Senate had as his guests some 200 young people at a "Forum for Young Canadians" breakfast, which a number of senators attended as well. I see these young people are in the gallery.

At 10:30 a.m., a fine ceremony was held in the rotunda of the Centre Block on the occasion of the unveiling of the sculpture of the Nunavut coat of arms, under the honourary chairmanship of the Speakers of the two Houses, Senator Molgat and Mr. Parent.

At 11:00 a.m., in the Centre Block, I took part in another event organized by Oxfam Canada, Oxfam Quebec, the Centrale de l'enseignement du Québec and the Canadian Teachers' Federation promoting the world action plan on education.

I would like to comment briefly on this event. Ten years ago, the leaders of 155 countries met at the World Conference on Education for All. They agreed to provide quality primary education to all children by 2000. They failed.

Today, some 125 million children are not in school. Most of them are girls. Imagine for an instant all the children in North America and Europe between the ages of 6 and 14, and you will have an idea of the number of children in the world who will never be attending school. However, statistics prove that education is the most powerful weapon we have against poverty. The same world leaders will be meeting again in Dakar, Senegal, at the end of April, with the aim of achieving education for all by 2015.

As the African proverb puts it, teaching a child is the business of the entire village. Universal primary education is expensive, but according to the best estimates, an additional $8 billion a year, less than half of what American parents spend on toys for their children in a year, is what it would take.

[*English*]

Honourable senators, those 125 million children worldwide who do not go to school deserve more than rhetoric. There is a solution. The Global Action Plan for Education has been endorsed by hundreds of citizen groups in 90 countries. As Canadian citizens, let us work together so that the dream of those 125 million children becomes a reality.

PARKINSON'S DISEASE AWARENESS MONTH

Hon. Brenda M. Robertson: Honourable senators, I wish to bring your attention today to the fact that April is Parkinson's Disease Awareness Month. Parkinson's disease is a slowly progressive, neurological condition that affects body movement or the control of movement, including speech.

Parkinson's disease has plagued society for centuries. However, it was only in the 19th century that the disorder was clinically recognized. Parkinson's disease affects people worldwide, including more than 1 million people in North America. At one time, Parkinson's occurred primarily in people over 65 years of age. Unfortunately, the current research shows that 30 per cent of patients are now diagnosed under the age of 50.

It is important to note that Parkinson's disease is not a fatal illness. Public health strides and healthier lifestyle choices have allowed people with Parkinson's to live well into their eighties; however, as the disease progresses, patients generally become unable to care for themselves. This causes both financial and emotional hardship on Parkinson's sufferers and their families.

Although strides in research have been encouraging, more money and research are needed to develop a cure. Recently, as perhaps honourable senators will remember, Parkinson's disease has been gaining public and media attention thanks to the openness of Michael J. Fox about his affliction with the disease. An accomplished actor of 20 years, a father and a husband, Michael J. Fox has become a spokesperson for Parkinson's in an attempt to raise both awareness and funding.

Honourable senators, one Parkinson's sufferer described being diagnosed with the disease in this way: "It is not a death sentence but a life sentence." With increased awareness and funding, hopefully this century will see a cure for a disease that seems to be gaining on us.

CANCER AWARENESS MONTH

Hon. Michael A. Meighen: Honourable senators, as we approach the middle of April, I rise to remind us all that April is Cancer Awareness Month in Canada. Unfortunately, I feel entirely confident in saying that cancer has touched the lives of each and every one of us in this chamber. It is astonishing to realize the number of people who suffer this disease. It is particularly disheartening to hear of younger and younger Canadians being afflicted with various forms of cancer.

Extraordinary Canadians have been struck down by this persistent disease. Who among us can forget the haunting pictures of Terry Fox running along the lonely highway, trying to raise awareness and money for cancer research? In 1977, Terry was only 18 years old when he was diagnosed with bone cancer and forced to have his right leg amputated.

In 1980, Terry started his Marathon of Hope. Can you believe, honourable senators, that 20 years have already passed? Although the spread of the disease eventually put an end to his marathon, his fight continues today. Terry Fox is legendary in our country. To date, his foundation has raised more than $250 million for cancer research.

The recent death of Olympic medallist Sandra Schmirler brought home for many of us the notion of how quickly this disease can rip a young family apart. With her competitive spirit and enthusiasm, Sandra made us all proud to be Canadian.

These two Canadians are among thousands who have fought and lost their personal battle with cancer. Indeed, in 1999 alone, 63,000 Canadians died of cancer and, regrettably, this number continues to rise. Considering how overburdened our health system is, more funds are urgently needed to increase the remission rate, promote prevention and eventually find a cure, for find one we will.

The fact that we have not yet done so should not be cause for discouragement. In the last 50 years, researchers have built a solid foundation of knowledge about cancer, and our success rate is on the rise.

All of us know people who have lost their battle with cancer, but we also know some — such as myself and others in this chamber — who are survivors. Cancer has plagued our society for too long and we need to make greater strides in eliminating the disease.

In this, unlike some other endeavours, money does make a difference. We Canadians, both privately and through our governments, must find the dollars.

I urge all honourable senators and all Canadians to dig as deeply as they can into their own pockets so that, sooner rather than later, we shall be rid of this scourge.

EIGHTEENTH ANNIVERSARY OF PROCLAMATION OF CONSTITUTION ACT, 1982 AND THE CHARTER OF RIGHTS AND FREEDOMS

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, on Monday next, April 17, Canadians will mark the eighteenth anniversary of the historic proclamation of the Constitution Act, 1982. We will recall the presence on Parliament Hill of Her Majesty Queen Elizabeth II on that misty day of April 17, 1982, when the Constitution Act, 1982, together with its Canadian Charter of Rights and Freedoms, was proclaimed. I know that several members in this house were there that day.

The mist in the air that day spoke to our tears of joy and achievement, for we were witnessing the "coming of age" of Canada. As a nation, we had reached at last the goal of that long journey to full sovereign independence that began with Confederation in 1867.

Honourable senators, we recognized that the road travelled had not always been an easy journey and we also realized that the road ahead would present its challenges. However, all the peoples of Canada have shown themselves to be equal to the obstacles of the past and indeed are up to meeting and overcoming the challenges of the future. We recognized the importance and value of those tried and true Canadian devices — flexibility and compromise.

While some have found fault with Canadian's use of ambiguity, most recognize that the genius of Canada has been to avoid allowing the search for excessive virtue to become a vice.

Honourable senators, there would have been no Charter of Rights and Freedoms without the *non obstante* provision. Those of us who have clearly opposed such a measure have learned to live with it and, fortunately, the common sense of Canadians has ensured its limited use.

• (1420)

Therefore, honourable senators, the anniversary of the Charter and the Constitution Act, 1982 on Monday next, is also a time to celebrate the wisdom and common sense of Canadians.

NEW BRUNSWICK

NATIONAL FRANCOPHONIE WEEK—CONGRATULATIONS TO CENTRE SCOLAIRE SAMUEL-DE-CHAMPLAIN AND ARCF DE SAINT-JEAN ON WINNING AWARD

Hon. Erminie J. Cohen: Honourable senators, as you are aware, New Brunswick is the only official bilingual province in Canada. Many regions in our province have mainly francophone residents. The French community in Saint John accounts for only 10 per cent of the population, which is approximately 12,000 people.

It is with pride that I inform you that the Centre scolaire Samuel-de-Champlain and ARCf de Saint-Jean have just won a national award held during National Francophonie Week. This contest, called "Actifs et fiers...En français...bien sûr!", the first of its kind, was organized by the Canadian Education Association of the French Language.

Forty-five French organizations participated in this inaugural event. The criteria included value of the French language and its culture, the diversity and individuality of the proposed activities, and the number of those activities enjoyed by the community as a whole. According to Mr. James Thériault, executive director of ARCf de Saint-Jean:

> ...this award is one the entire community may be proud of.

He continued:

> Of course, such an award reinforces the fact that our Francophone community is on the right track.

[Senator Kinsella]

Honourable senators, this recognition speaks to the wonderful spirit of cooperation that is emerging in our community. The French community in Saint John, New Brunswick, is a vital addition to our city. As New Brunswickers, we share their pride in receiving this meaningful award.

NATIONAL LAW WEEK

Hon. A. Raynell Andreychuk: Honourable senators, I, too, want to say a few words about National Law Day, which has became National Law Week. As Senator Kinsella pointed out in his statement, the repatriation of our Constitution in 1982 was an important point in the history of the development of this country. It meant that, at last, we would be able to amend our Constitution without involving the British Parliament. It also meant that our parliamentary democracy would have a constitutionally entrenched Charter of Rights and Freedoms — a victory for minorities.

The entrenchment of the Charter of Rights and Freedoms in our Constitution brought into focus for Canadians, as perhaps never before, the role of the courts in our society and the role that Parliament plays in enacting laws that our courts enforce. The original intent of Law Day was to give an opportunity to those involved in law — teachers, judges and lawyers — to bring to the attention of the general public varying aspects of the legal environment, through lectures and seminars.

The theme for Law Week for this year is "access to justice". This is a crucially important theme because in recent years, with cutbacks in government funding and the reduction of government programs, the provincial legal aid plans across the country are in some jeopardy. It is through these legal aid plans that we ensure, in an institutional way, secure access to the legal system for those who cannot afford to retain legal assistance. Access to competent legal representation must be assured if our legal system is to survive.

Our legal system is predominantly an adversarial system. As that great American legal scholar, Jerome Frank, stated:

> It is in the adversarial system that the truth will emerge.

Therefore, assuring access to the legal system for all Canadians is an appropriate theme for law week. In various communities across this country, courthouse tours have been arranged, career panels held in high schools and universities, and, in my own province of Saskatchewan, a provincial mock trial competition has been organized. Not only will this provide important experience to the students involved, but it will bring to the public's attention the importance of the legal system in our society.

The Canadian Bill of Rights, enacted by the Parliament of Canada in 1960, and the Charter of Rights and Freedoms, entrenched in our Constitution in 1982, both acknowledge that Canada was founded upon the principle that recognizes the supremacy of the rule of law.

Honourable senators, I wish to thank all those Canadians who have participated in National Law Week, as it reminds us of one of the principles upon which our country was founded.

WOMEN'S CURLING

Hon. Mabel M. DeWare: Honourable senators, last weekend the Canadian women's curling team once again did our country proud by winning the World Women's Curling Championship. I should like to salute not only the champion team, skipped by Kelley Law, but all women curlers in Canada for the important contribution they make to the sport.

Honourable senators, this championship started in 1978, thanks to intensive lobbying of the International Curling Federation. They should have been called the "old boys' club". There were four women, one each from Canada, the United States, Scotland and Sweden. I was pleased to be the Canadian delegate who attended those meetings.

We started in 1975 with a meeting in Vancouver. This was followed by meetings in Perth, Scotland; Duluth, Minnesota; Karlstad, Sweden; and Winnipeg, Manitoba. In Duluth, the committee was chaired by Colin Campbell from Ontario whom some of you may have known. He was a hard taskmaster and was not prepared to have the federation bring women into the world scene. Therefore, we went to Karlstad, Sweden, and bent their arm again. In Winnipeg, in 1978, they finally broke down and agreed that women could have a place in the curling world.

The first women's championship took place in Scotland in 1978. At that time, my pitch to the federation was that the women's championship should take place at the same time as the men's because, with the coverage of the media and for the fans following the sport, it was not practical to have two world championships. However, they disagreed. In 1989, though, 10 years later, we began having joint championships.

Honourable senators, Canadian women's curling has come a long way since I skipped the team that won the Canadian Women's Curling Championship in 1963, which was two years after the championship was founded. The juniors have won a number of titles and the women have won more than half of the world championships.

Curling has since been recognized as an Olympic sport and, as you know, our first Olympic winner was Sandra Schmirler.

Our women curlers have been able to develop world-class skills, thanks, I believe, to the tradition of curling in this country. We have been curling since the 1700s, when General Wolfe's soldiers and Scottish settlers brought the sport to Canada. We have over 1 million curlers in Canada, and more than 1,200 curling clubs.

I wish to add my congratulations to those of Senator St. Germain. I congratulate the Canadian women for bringing curling to this proud state in sport.

Senator St. Germain: Hear, hear!

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I should like to introduce to you a distinguished visitor in our gallery. It is the Honourable Peter Irniq, Commissioner of Nunavut.

Mr. Commissioner, on behalf of all honourable senators, I wish you welcome here in the Senate.

Hon. Senators: Hear, hear!

Hon. Willie Adams: Honourable senators, I would like to congratulate the new Commissioner of Nunavut. Peter Irniq is a good friend of mine.

Senator St. Germain: You have influence already.

Senator Adams: We are not only friends through politics, but we have been good friends who have hunted together out on the land. I will never forget the time we went out caribou hunting and the caribou were far from our community. We both ran out of gas and, therefore, had to walk back home.

I congratulate Peter Irniq, particularly at the one-year anniversary of the new Territory of Nunavut. Mr. Irniq was sworn in as Commissioner of Nunavut just two weeks ago and he has already become very active in his job as Commissioner.

I would also like to thank Senator Losier-Cool for attending the ceremony for the dedication of the Coat of Arms of Nunavut, which took place this morning at 10:30. The syllabics on the top of the coat of arms are in the Inuktitut language. The translation is "Nunavut Our Strength."

• (1430)

ROUTINE PROCEEDINGS

PRIVILEGES, STANDING RULES AND ORDERS

FOURTH REPORT OF COMMITTEE PRESENTED AND PRINTED

Hon. Jack Austin: Honourable senators, I have the honour to present the fourth report of the Standing Committee on Privileges, Standing Rules and Orders concerning the questions of privilege raised by Senator Andreychuk and Senator Bacon.

(*For text of report, see today's* Journals of the Senate, *Appendix "A", p. 531.*)

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

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

FIFTH REPORT OF COMMITTEE PRESENTED AND PRINTED

Hon. Jack Austin: Honourable senators, I have the honour to present the fifth report of the Standing Committee on Privileges, Standing Rules and Orders concerning the question of privilege raised by Senator Kinsella.

(*For text of report, see today's* Journals of the Senate, *Appendix "B", p. 540.*)

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

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

CANADA ELECTIONS BILL

REPORT OF COMMITTEE

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

Thursday, April 13, 2000

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

FIFTH REPORT

Your Committee, to which was referred Bill C-2, respecting the election of members to the House of Commons, repealing other acts relating to elections and making consequential amendments to other acts, has in obedience to the Order of Reference of Tuesday, March 28, 2000, examined the said bill and now reports the same without amendment.

Respectfully submitted,

LORNA MILNE
Chair

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

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

QUESTION PERIOD

PRIME MINISTER

POSSIBILITY OF RECALL FROM TRIP TO MIDDLE EAST

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, my question is to the Leader of the Government in the Senate.

As his behaviour has been quite unlike the touch of Midas, and more like the adventures in *The Iliad*, when will this government recall the Prime Minister from the Middle East?

Senator Lynch-Staunton: Paul Martin won't get him!

Senator Forrestall: Send a Sea King for him!

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I believe the Prime Minister's schedule is well known, and we certainly wish him a safe return. However, he has work to do there, and we wish him good luck with his task in that area of the world.

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS

Hon. J. Michael Forrestall: Honourable senators, my question is for the Leader of the Government in the Senate.

Most honourable senators will have read this morning, with a little bit of shock and sadness, the difficulties that our Sea Kings are having. Recent news reports stated that the British Navy had to bail Canada out twice during a major NATO exercise last fall. The Canadian Sea Kings sat inoperable. In both cases, the Canadians required the British assistance to help Canadian personnel due to medical emergencies.

With lives hanging in the balance due to the unreliability and unavailability of these aircraft, when will the government take some initiative and issue the order for shipboard replacement helicopters?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, as my honourable friend knows, and we agree, the Sea King helicopters are really at the extended edge of their useful life. Some may debate whether they have gone beyond that. As the senator and I have discussed before, they require a significant amount of maintenance and repair on a regular basis. It has been the policy of the Department of National Defence that when such repairs are done and the equipment is upgraded, no serviceman is sent on a Sea King helicopter mission unless the superiors are absolutely convinced that the helicopter will operate without bringing risk to the operator's safety or, indeed, their lives.

Having said that, I recognize, as does the honourable senator, that these helicopters do need replacement. The Minister of National Defence has indicated repeatedly, and I have repeated his statements in this place, that replacement of the Sea King helicopters is the number one priority for him, along with the submarine replacement program, both of which are now underway. I share the view of the Minister of Defence that we may very soon see underway the replacement process for the Sea King helicopter.

Senator Lynch-Staunton: The same one the government cancelled?

Senator Forrestall: Honourable senators, my question is very serious. I do not mean to become difficult with respect to this matter, but we now know that 40 per cent of the missions fail because of inoperability, mechanical difficulties and an inability to fly in certain types of weather. We have been putting off this decision since 1994! The cost of doing so is much more than $700 million or $800 million. I can construct on paper for honourable senators that this decision by the Prime Minister of this country cost Canadians $1 billion and change.

Must we wait until the ultimate tragedy takes place before we do the simple thing? Far better for me to plead with the government to tie up the ships and fire the navy because of benign neglect. That is what the government has done. However, in doing that, the government has placed the lives of Canadian men and women at some considerable jeopardy. I ask the Leader of the Government in the Senate to convey my message and my plea to the minister.

• (1440)

We are well into the year 2000 and we should be flying the replacements. They should have been airborne by now. For the sake of these men and women, will we, at least, order the replacements?

Senator Boudreau: Honourable senators, the government has committed itself and, indeed, has begun programs for major capital replacements of equipment, one of them being the submarine program. We will have new submarines.

Senator Lynch-Staunton: Not new, used.

Senator Boudreau: We will also have new helicopters for search and rescue. There is no question that this piece of equipment has to be replaced. We have been assured by senior military personnel of its operational capability. Indeed, I mentioned to the honourable senator, following some of his interventions, that I visited the facility that does repair and upkeep. I raised his concerns literally on the shop floor. I am assured that the repairs and upkeep are being done and that no one is being sent on a mission which would put lives in danger.

Does the equipment require a lot more repair and maintenance than we would like? Yes. The minister has made it his top priority, and I anticipate that the program will move forward in the near future.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I have a supplementary question. If the minister has just admitted to the Senate that the equipment needs replacement, why did his government cancel the contract?

Senator Lynch-Staunton: In 1994. You were not there.

Senator Boudreau: At the time, the view certainly was that there would be a saving. In fact, the question was whether or not that particular type of equipment was appropriate. Huge military purchases such as those require careful assessment as to whether or not the taxpayers of Canada are purchasing the appropriate piece of equipment to do the job.

UNITED NATIONS

POSSIBILITY OF SECURITY COUNCIL RESOLUTION TO ABSOLVE LIEUTENANT-GENERAL ROMÉO DALLAIRE OF ALLEGED MISCONDUCT DURING ASSIGNMENT TO RWANDA

Hon. Douglas Roche: Honourable senators, this question is to the Leader of the Government in the Senate.

Tomorrow, Foreign Affairs Minister Axworthy, on behalf of Canada, will chair a meeting of the United Nations Security Council on the 1994 genocide in Rwanda and how to avoid such catastrophes in the future. This occurs at a time when one of Canada's distinguished military figures, Lieutenant-General Roméo Dallaire, who served the UN in Rwanda at that time, is entering retirement.

Yesterday, in the House of Commons, Defence Minister Eggleton said that it was not just the United Nations itself but the countries that contribute to the UN that failed General Dallaire when he called out for help.

I should like to ask the minister if the Senate could join in lifting the cloud over General Dallaire's head by prompting a Canadian statement at tomorrow's meeting of the Security Council, so that a truly fine, compassionate man and dedicated servant to peacekeeping may enter his retirement years with the knowledge that all parliamentarians applaud him and wish him well?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I will bring that request without delay, given the short time frame, to the attention of the appropriate authorities and ask that it be considered.

NATIONAL DEFENCE

POSSIBILITY OF SUSPENSION OF ANTHRAX VACCINATION PROGRAM

Hon. Michael A. Meighen: Honourable senators, my question is to the Leader of the Government in the Senate.

As the minister is no doubt aware, the U.S. House subcommittee on national security has recommended that the anthrax vaccination program used by the American military — the same vaccination program used by the Canadian military — be suspended. The vaccine in question has not been tested against inhaled airborne spore, which is the most likely form of attack. As well, the U.S. Federal Drug Administration has shut down the sole anthrax vaccine manufacturer in North America, Bioport, because the manufacturer's facilities do not meet FDA approval.

This summer, the HMCS *Calgary* will go to the Persian Gulf. Will personnel on the *Calgary* be vaccinated against anthrax? If so, where will the vaccine come from? Does the navy intend to use the same Bioport vaccine which has been banned in the U.S. because it does not meet government regulations?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I thank the honourable senator for raising this issue. I do not have the specific details of the program for those particular service people. The government will ensure that whatever health precautions are necessary will be put into effect.

To reply specifically to the honourable senator's question, I shall seek the information from the Minister of National Defence, ask the questions that are raised here, and respond at a future date.

AGRICULTURE AND AGRI-FOOD

FLOODING PROBLEM IN MANITOBA AND SASKATCHEWAN—POSSIBILITY OF ASSISTANCE

Hon. Terry Stratton: Honourable senators, my question is addressed to the Leader of the Government in the Senate. I refer again to the farmers in southwestern Manitoba and southeastern Saskatchewan. Once again, I must claim that the answers to my questions are found in the newspapers.

In the *Winnipeg Free Press*, Friday, April 7, the Minister of Public Works and Government Services for the Province of Manitoba, Steve Ashton, stated they were very disappointed. The provincial government had estimated that the federal government owes the province about $39 million in disaster assistance. Mr. Ashton said:

> ...it appeared Ottawa was going to ante up, however a deal was nixed in a March 29 letter from Art Eggleton, federal minister responsible for emergency preparedness.
>
> Ashton said the letter indicated that weed control, loss of applied fertilizer and forage restoration are not eligible under the Disaster Financial Assistance Arrangements.

The estimated costs are $43 million.

Is that accurate, sir?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I do not have the specific information with respect to the honourable senator's quote from a letter of a minister in Manitoba. I will pass that information on and see if I can have it verified. I am not sure, given that the quote comes from the provincial minister, whether the federal minister will be able to verify specific cost figures. I certainly have no problem asking. If he does have those figures, I will confirm them for the honourable senator.

Senator Stratton: I believe I asked the Leader of the Government in the Senate this question over a month ago. As a matter of fact, he informed me, I think about February 28, that he had given me a written response. Yet we have rejection letters coming a month later. Surely to goodness, the Leader of the Government in the Senate can be more open and direct with us. If that is to occur, at least inform us on or before the day that it does occur so that I may be aware, rather than having to read the answer in the newspaper. Why should I have to do that? Why should any senator have to do that?

We have concerns for those farmers. They are legitimate concerns. It proves once again the minister just does not seem to care.

I will refer to an article from today's *Leader-Post* of Regina.

> Farmers in the province's southeast will continue to push for compensation for lost inputs and land maintenance for flooded land last spring, despite a rejection by Ottawa last week.

Can the government leader confirm that again?

• (1450)

Senator Boudreau: Honourable senators, the information I tabled in response to the question remains true and complete to the best of my knowledge to this date.

Senator Stratton: Honourable senators, I should like to put on the record what the President of the Southeastern Saskatchewan Rural Municipalities Association had to say about this. He stated:

> They don't seem to want to declare the area a disaster. ...That was kind of another slap in the face. We don't seem to be important enough when we hit some of these disasters.

That is how the people feel down in that part of the world.

Senator Boudreau: Honourable senators, I would simply say that decisions of this sort are made on established criteria. In fact, the assistance in the tabled information was made available. If some people are disappointed at any level of assistance, I can understand that; but, in fact, that remains the case. I can only repeat the information that I gave to the honourable senator previously.

Senator Stratton: That is wonderful for those folks. Wonderful. They fall between the cracks again.

INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

AUDITOR GENERAL'S REPORT—SUBSTANDARD QUALITY OF NATIVE EDUCATION

Hon. Gerry St. Germain: Honourable senators, my question is to the Leader of the Government in the Senate. Recently, the Auditor General reported that there are approximately 117,000 native children in schools that are funded by, I would presume, DIAND and the federal government to the tune of approximately $1.3 billion. He said that the education they are receiving is substandard and does not allow them to be competitive in our society. Is the government leader aware of that?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I am aware in summary of the Auditor General's comments in that area. As the honourable senator knows, the Auditor General's rather extensive report dealing with seven or nine separate areas in great detail was tabled this week — the day before yesterday, I believe. I am not completely familiar with all the details of each of those areas, but there were criticisms made by the Auditor General with respect to the approach in the area of native education.

Senator St. Germain: Then I must ask: Will the government ignore, as it has in the past, the recommendations of the Auditor General? If not, what will it do to rectify this unacceptable situation for our native peoples in this country? Is the minister aware of any immediate action or game plan being developed to deal with this situation? The minister will know that we have been told many times in various committee hearings on aboriginal issues that education is critical in improving the plight of our native peoples.

Senator Boudreau: Honourable senators, the department will no doubt review that report thoroughly and will take it very seriously. I know the department agrees, without question, that education for First Nations people, whether it occurs on a reserve or in the regular school system, is exceptionally important. Actually, elementary and secondary education is the department's largest single program allocation within its budget.

Senator St. Germain: How many dollars have been allocated?

Senator Boudreau: With an estimated budget of $995 million in 2000-2001, almost $1 billion, it is a substantial amount.

Senator Lynch-Staunton: Did the government leader read the Auditor General's report?

Senator Boudreau: Honourable senators, there is a need to work with communities, with aboriginal leaders and within the educational process, both on and off reserves, to improve performance. However, I caution that we must do so in partnership with the aboriginal communities themselves.

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 December 14, 1999, by Senator Oliver regarding the allocation of Canada Pension Plan credits in marriage breakups; a response to a question raised in the Senate on February 10, 2000, by Senator Cochrane regarding the Millennium Scholarship Foundation, disbursement of scholarships; a response to a question raised in the Senate on February 23, 2000, by Senator Cochrane regarding the Millennium Scholarship Foundation, disbursement of funds as between operational expenses and grants; a response to a question raised in the Senate on March 28, 2000, by Senator Forrestall regarding the report on restructuring reserves, viability of militia; and response to a question raised in the Senate on March 29, 2000, by Senator Forrestall regarding the rescue operations at sea, condition of fourth Sea King helicopter assigned to task force.

FINANCE

ALLOCATION OF CANADA PENSION PLAN CREDITS IN MARRIAGE BREAKUPS

(Response to question raised by Hon. Donald H. Oliver on December 14, 1999)

The 1997 paper, *Securing the Canada Pension Plan: Agreement on Proposed Changes to the CPP*, which set out the federal-provincial agreement on important changes to sustain the Canada Pension Plan, noted that splitting of CPP credits between spouses was an important issue that needed further review. It noted concern about the low take-up of existing credit-splitting provisions.

The CPP provides for the splitting of CPP pension credits on marriage breakdown. Credit-splitting is mandatory on divorce and by application in cases of separation within legal and common law unions. These provisions reflect the fact that CPP credits are "assets" that are earned jointly by both members of a couple. However, to respect provinces' jurisdiction over family law, the CPP legislation provides provinces with the choice, under provincial family laws, of allowing couples to opt out of the credit-splitting provision.

Where credit-splitting is mandatory for legally married couples who are divorcing, it has in practice proved impossible to make credit-splitting automatic, as there is no automatic mechanism for providing the CPP administration with necessary information about divorcing couples. For reasons that are generally unknown, most divorcing couples do not inform the CPP administration of their divorce, and as a result, only about 16 per cent of divorcing couples have their credits split.

Following up on their 1997 commitment, the federal and provincial governments have been exploring practical ways to increase the take-up of credit-splitting. At a meeting of federal and provincial Ministers of Finance on December 9, 1999, the federal and Manitoba governments agreed to implement a pilot project in Manitoba. The pilot project will provide for the automatic forwarding of information required to effect credit splits from the provincial courts to the CPP administration. The two governments are in the process of establishing in detail the parameters of the pilot project, including legislative, regulatory, administrative, and communications issues in both jurisdictions. The pilot project will be evaluated for relevance to other jurisdictions.

HUMAN RESOURCES DEVELOPMENT

MILLENNIUM SCHOLARSHIP FOUNDATION—DISBURSEMENT OF SCHOLARSHIPS

(Response to question raised by Hon. Ethel Cochrane on February 10, 2000)

Regarding questions on the Canada Millennium Scholarships initiative as to how much money has been given directly to students and how much has gone to provincial governments, Canadian students received some $285 million in additional financial assistance for the 1999-2000 academic year.

The Foundation has signed agreements with provincial and territorial governments for the delivery of the scholarships through their student financial assistance programs. These agreements provide that the bulk of the Canada Millennium Scholarships Foundation's funds go to students. Provinces have committed to reinvest any savings they accrue back into the education system.

Under these agreements, the Foundation will reimburse the jurisdictions for a portion of the administrative costs relating to the delivery of the scholarships. In addition to a total one-time cost of $1.23 million to upgrade information systems, these payments amount to a total annual sum of approximately $2.5 million only. Students will clearly be receiving the bulk of the Foundation's funds.

As for the question of how many students thus far have refused to accept these scholarships, as of February 9, 2000, out of some 100,000 scholarship recipients, only 8 students had not accepted their scholarship. A key reason for non-acceptance was the taxation of scholarships.

The concerns of students regarding the taxation of scholarships were clearly addressed in Budget 2000, when the tax exemption for income from scholarships, fellowships and bursaries was increased from $500 to $3,000. As a result of this measure, the average $3,000 scholarship will now be exempted from taxation.

MILLENNIUM SCHOLARSHIP FOUNDATION—DISBURSEMENT OF FUNDS AS BETWEEN OPERATIONAL EXPENSES AND GRANTS

(Response to question raised by Hon. Ethel Cochrane on February 23, 2000)

Regarding questions on the Canada Millennium Scholarship Fund, requesting a projection as to how much of the original scholarship endowment will be diverted away from Canadian students in need over the full 1998-2010 period, the Canada Millennium Scholarship Foundation has committed to keeping administrative costs as low as possible in order to maximize the funds available to students.

The Foundation has committed to keeping its annual operating budget between $8 million and $10 million, representing only 3 to 4 per cent of the annual spending. This is well below the initial projection of an allocation of 5 per cent for administrative costs.

In its first year of operations, the Foundation accomplished a great deal. For instance, a portion of the Foundation's expenditures in the first six months were used to undertake extensive consultations with provincial and territorial governments, student associations and other representatives of the learning community. These consultations helped the Foundation decide how best to meet the needs and expectations of students in disbursing the funds.

It is important to note that significant costs were also incurred in establishing the Foundation's investment portfolio. Expenses related to the management of the Foundation's $2.5 billion Fund certainly paid off. As a result of this investment, the Foundation's funds increased by $64.5 million.

With regards to the question: "could this scholarship program not be better managed within the existing Canada Student Loans Program (CSLP), or some other program", it is important to note the following.

– The Government of Canada has chosen to celebrate the new millennium by investing in the knowledge and skills of Canadians and not in bricks and mortar, like many other countries have done.

– The Canada Millennium Scholarship Foundation was legislated a specific mandate to help Canadians of all ages access post-secondary education and manage their student debt through the award of scholarships.

– In collaboration with provincial and territorial government and by building on existing programs of student financial assistance, the Foundation has succeeded in avoiding costly duplication and in granting the first scholarships to students well ahead of schedule.

– Through its Excellence Awards program, the Foundation will also recognize and encourage excellence in Canadian students, including academic achievement.

– Awarding scholarships is beyond the mandate of programs such as the CSLP, whose mandate is to provide loans, not scholarships.

It is also important to note that as an independent body, the Foundation will carefully invest the $2.5 billion endowment in order to generate additional funds for students.

The honourable senator has been provided with a copy of the Foundation's 1998 Annual Report, as requested in her question.

NATIONAL DEFENCE

REPORT ON RESTRUCTURING RESERVES—
VIABILITY OF MILITIA

(Response to question raised by Hon. J. Michael Forrestall on March 28, 2000)

The Reserves are an important pillar of the Canadian Forces (CF) and play a wide variety of roles both at home and abroad. The Department of National Defence remains committed to developing a Reserve that is viable, sustainable, relevant to current operational requirements, and an essential part of the CF force structure. Through restructuring, the CF also hopes to take advantage of the enormous potential that resides in the Reserves to enhance the operational capability of the CF.

The recent press reports indicating units declared non-viable will be closed are based on documents containing only preliminary information that were released through Access to Information. Concluding that the units described as non-viable will be closed is both unfair and wrong as unit viability evaluations are only one piece of the puzzle. Reserve restructuring is a complex matter with many factors to consider and no decision concerning restructuring — including whether units will be assigned new roles — has been made.

Much work needs to be done and the Minister of National Defence asked the Honourable John Fraser — the Chair of the reconstituted Monitoring Committee — to provide advice on the Reserve restructuring process. The Department is examining forward-looking, operationally focused proposals for reserve restructuring that are being considered by the CF's senior leaders. The goal of this restructuring process is to make the Reserves more relevant to the types of operations in which the CF is most likely to be engaged.

RESCUE OPERATION AT SEA—CONDITION OF FOURTH SEA KING HELICOPTER ASSIGNED TO TASK FORCE

(Response to question raised by Hon. J. Michael Forrestall on March 29, 2000)

All Canadians should be extremely proud of the skills and professionalism demonstrated by the men and women who participated in this rescue operation. Thirteen lives were saved because the Canadian Forces was able to respond quickly and effectively. The Naval Task Group, comprising of five ships and four embarked Sea King helicopters, was en route to naval exercises in the Caribbean when the tragic incident occurred. After the Panamanian ship called for assistance, four of the Canadian warships redirected their course and proceeded to the distressed ship at best speed to offer assistance and participate in the rescue.

As soon as the Panamanian ship was within the Sea King's operational range, two Sea Kings were dispatched. They flew approximately 100 nautical miles and reached the scene of the incident in the middle of the night. Twelve crew members were rescued from the water and a thirteenth survivor was picked up by HMCS *Halifax*. In addition to the Sea Kings, a CF Hercules aircraft as well as an Aurora long-range patrol aircraft deployed from 14 Wing Greenwood to assist in the operation.

The two other Sea Kings did not participate in the nighttime rescue operation as their onboard doppler radars were unserviceable. Although the two helicopters *could* have flown at night, the doppler radar problem would have prevented the helicopters from hovering safely over the particularly stormy sea, thereby putting the lives of their crews at unnecessary risk.

One of the Sea Kings did join the search operation the next morning. The fourth helicopter, however, was held in reserve on its ship and was available for operations if needed.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, before we proceed to further discussion, I remind everyone that, under the order of the house, I will be obliged to stop all debate at 3:15 to proceed with the votes.

NISGA'A FINAL AGREEMENT BILL

THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Gill, for the third reading of Bill C-9, to give effect to the Nisga'a Final Agreement;

And on the motion in amendment of the Honourable Senator St. Germain, P.C., seconded by the Honourable Senator Andreychuk, that the Bill be not now read a third time, but that it be read a third time this day six months hence;

And on the motion in amendment of the Honourable Senator Sparrow, seconded by the Honourable Senator DeWare, that Section 3 of the Bill be amended by adding the word "not" following the word "is".

The amended Section 3 will therefore read:

> "3. The Nisga'a Final Agreement is not a treaty and a land claims agreement within the meaning of Sections 25 and 35 of the Constitution Act, 1982.";

And on the motion in amendment of the Honourable Senator Sparrow, seconded by the Honourable Senator DeWare, that Section 27 of the Bill be amended by adding the following:

> "which day shall not be earlier than the date upon which the Supreme Court of Canada pronounces on the validity of the Nisga'a Agreement."

The amended Section 27 will therefore read:

> "The provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council, which day shall not be earlier than the date upon which the Supreme Court of Canada pronounces on the validity of the Nisga'a Agreement."

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, first, I commend and thank Senator Austin as chairman, Senator St. Germain as deputy chairman, and all members of the committee for the many hours — indeed, long days — they spent in an exhaustive and most valuable series of meetings on Bill C-9.

I listened to a number of the hearings and have read many of the transcripts. If nothing else, once again we have solid evidence of the Senate's ability to get to the heart of an issue, even one as complex and as controversial as the one before us. This is in sharp contrast to the usually superficial manner with which the other place examines legislation, as was certainly the case with Bill C-9.

Honourable senators, I should like to quote from the Minister of Indian Affairs at the end of his first appearance before the committee. He said:

> ...we had a lot of difficulty in the other place in getting down to the facts of the treaty. We were very annoyed about the fact that we did not get to talk about the particular clauses and the chapters and what they mean in the other place. That was a disservice to Canadians and British Columbians.

Had the bill been in introduced in the Senate first, the other place would have had the advantage of our deliberations, in sharp contrast to theirs, which are of little, if any, value to us.

Before giving reasons for supporting Senator St. Germain's amendment, I hope that Senator Austin will, at the earliest opportunity, reconsider his categorizing it as "infamous". The Oxford dictionary on the clerk's table defines "infamous" as "of ill fame or repute; notorious for badness of any kind; held in infamy or public disgrace." Whatever one may think of the amendment, hopefully Senator Austin will agree on reflection that terming it "infamous" was somewhat excessive, to say the least.

Let me repeat at the outset that anxiety over Bill C-9 has nothing to do with aboriginal self-government per se. It was a Conservative government which established the Royal Commission on Aboriginal Peoples. It was a Conservative government which urged Canadians to approve in a referendum the inherent right to self-government in the 1992 Charlottetown accord, an accord which sadly was rejected, and no less so than by 62 per cent of the aboriginal people themselves, according to Elections Canada.

Senator Austin has invoked the rejected Charlottetown accord, section 45 in particular, to justify Bill C-9. Last week, after I said that we were being asked to sanction a separate entity that has never happened before in Canada, Senator Austin replied as follows:

> Those last few words are absolutely correct. We are creating something new here, and this is a form of aboriginal government that will be constitutionally protected under section 35. That is seen as a desirable step, certainly by many on this side, and I hope many on the side opposite. It was a step that was described in full in section 45 of the Charlottetown Agreement.

• (1500)

Later, he went on to say:

> The government of former prime minister Brian Mulroney made that proposal to the people of Canada with the agreement of all premiers. It is an issue that should cause no fear or concern to senators on that side. The policy comes from the honourable senator's party and from former prime minister Mulroney.

To have the government, through Senator Austin, justify the Nisga'a agreement by invoking Conservative policy should not surprise anyone, as this has been done repeatedly by the Liberal government over the last seven years, but that he do so despite the fact that it was rejected through a referendum should trouble us all.

No stronger rejection of the accord took place than in Senator Austin's own province of British Columbia, where, as Senator Carney reminded us last week, the majority in every single riding but one voted against the accord, including a majority of aboriginals.

Senator Sibbeston echoed Senator Austin's argument last Thursday, when he said:

> In March 1992, a joint parliamentary report recommended the inherent power of self-government be entrenched but in a manner consistent with a view that section 35 of the Constitution might —

I underline the word "might".

> — already recognize that right.

A little later, in speaking of the Charlottetown accord, he said:

> We do not know precisely which parts of the accord the voters rejected. Nevertheless, it shows the government thinking and the support for aboriginal self-government which has grown over the years.

The difference of opinion, then, is not related to support for the inherent right of self-government but to whether it is constitutional as spelled out in the Nisga'a treaty. Our two colleagues invoke the spirit of deliberations over the years to claim that this inherent right is found at least de facto in section 35. I join with others in claiming that that is just not enough, because the whole history of section 35 and what follows from it can only lead one to conclude that its authors did not intend to include inherent self-government.

On Tuesday, Senator Buchanan, in no uncertain terms, declared Bill C-9 unconstitutional. As a participant in every federal-provincial constitutional conference in the early 1980s, he told us unequivocally that no one around the table, beginning with Prime Minister Trudeau himself, ever accepted that section 35 was to be interpreted as including the inherent right of self-government and that this view was shared by the aboriginals themselves.

No parliamentarian can dismiss such testimony from one who not only was there but who was an active participant in all discussions on section 35.

I would like to pick up where Senator Buchanan left off and summarize developments after the amendment adding subsections (3) and (4) to section 35 was agreed to in March 1983.

In 1983, an amendment was sent to our Legal and Constitutional Affairs Committee — not a special committee, by the way. That committee was chaired by our former colleague the Honourable Senator Joan Neiman.

A review of the evidence given to that committee is instructive in determining the meaning of section 35 as amended. The then deputy secretary of the cabinet for federal-provincial relations, Pierre Gravel, testified that there were 19 items on the agenda for that meeting, including self-government. He then informed the committee that aboriginal government was to be on the agenda for the March 1984 constitutional conference.

Both the late Mark McGuigan, then minister of justice, and John Munro, the then minister of Indian and northern affairs, testified that self-government was not within section 35 as amended.

This view is given even further support when one refers to the Report of the Special House of Commons Committee on Indian Self-Government in Canada, known as the Penner report and referenced by Senator Sibbeston. This special committee reported in October 1983. It was a significant committee for a number of reasons, not least for the depth of its analysis of the subject of self-government. which benefitted, through a special order of the House, by having representatives of the Assembly of First Nations, the Native Women's Association of Canada, and the Native Council of Canada participating as full members of the committee.

Chapter 11 of the report is entitled "Structures and Powers of Indian First Nation Government" and it recommends that a statutory method for achieving self-government be put in place as section 35 did not contain the constitutional basis for self-government. The quote from this report that was used by Senator Sibbeston in his speech on Bill C-9 comes from a chapter headed, "Scope of Powers," which is preceded by a lengthy discussion from which I have just quoted on the legislative means necessary to achieve self-government because the proper constitutional basis was not and is not in place.

In June 1984, this legislative view is given further credit when John Munro, still minister of Indian affairs and northern development, introduced at first reading Bill C-52, the Indian Self-Government Act, establishing a legislative scheme or framework whereby Indian groups or nations who wished to become self-governing could attain self-government through a legislative process. Obviously, the bill was tabled to legislate a form of self-government that section 35 does not permit.

Of course, the next major constitutional proposal was the Meech Lake Accord, at a time when the aboriginal peoples of Canada complained repeatedly that they had been left out of the process. Both the report of the special joint committee on the accord and the report of the Senate Committee of the Whole urged the government to put aboriginal self-government back on the negotiating agenda for future constitutional conferences.

Therefore, at that time, there was still no support for section 35 containing the constitutional base for aboriginal self-government.

Senator Sibbeston mentioned in his remarks on Thursday the report of the Beaudoin-Dobbie committee, the Special Joint Committee on a Renewed Canada. Just to set the record straight, that committee did hear witnesses who stated that the inherent right of self-government may already be entrenched in section 35; nevertheless, the committee recommended that the inherent right of aboriginal peoples to self-government be entrenched through a constitutional amendment.

Of course, the last document to which I will refer is the 1992 Charlottetown Agreement, which, while representing the unanimous view of first ministers and the representatives of the Assembly of First Nations, was rejected in a referendum, as we all know.

It proposed a constitutional amendment in the form of a new subsection to section 35 that recognized the inherent right to self-government so that aboriginal government could become a third order of government in Canada. This would have been the amendment upon which the Nisga'a government as set out in the Nisga'a Final Agreement would have been based.

From this quick summary of constitutional developments since 1982, one can only conclude that those who were in government and at the conferences and committee hearings, as well as those from the aboriginal community, clearly believed that section 35 does not contain the inherent right of self-government. If it is to be established, it must be established by way of amendment, as proposed in the Charlottetown Agreement. Otherwise, it will be up to the courts to determine the constitutional legitimacy of the governance structures set out in the Nisga'a Final Agreement.

What is being proposed here, honourable senators, is an ersatz constitutional amendment through legislation, based on a most questionable interpretation of section 35. As in Bill C-20, the government is resorting to a legislative solution when it should be enshrining certain basic values in the Constitution. It did in the case of Term 17 and the change in the Quebec school systems only because the bilateral amendment formula could be applied. When it came to proclaiming Quebec a distinct society, however, as well as reinstating its veto and extending it to other regions, it did so by House of Commons resolution and legislation, respectively, rather than through amendment, as other more difficult constitutional formulas would have had to be applied.

I detect the same pattern here. Section 35 applies, claims the government, and if anyone disagrees, challenge the bill in court. In other words, it cannot be bothered reopening the Constitution because that is ground upon which no government concerned strictly with self-preservation will ever tread. Instead, it introduces a bill, and if its constitutionality is in doubt, let those who may want to pursue the argument take it to the courts.

• (1510)

I simply do not accept that any bill that is so fundamentally challenged as is Bill C-9 should be voted on before a court decision on the challenge has been rendered. Parliament is the first to complain about the intrusion of the courts on its jurisdiction; yet, it is Parliament that invites the courts to do so by debating and approving legislation it knows is seriously flawed. I could cite the Pearson bill, the Electoral Boundaries Redistribution Act, Bill C-78, two tobacco bills, the gun control bill, and the bill in effect banning MMT. Tabled before us today is Bill C-2, the election bill, which has just been reported back from committee, containing restrictions on third-party financing that have already been before the courts and will be again should the bill become law.

Bill C-9, I fear, is being called on to suffer the same fate as a number of its predecessors, regardless of the ultimate verdict. Making Bill C-9 law before major objections are confirmed or denied, whatever the case may be, will cast a pall as its implementation proceeds. It will discourage entering into similar agreements with other aboriginal nations. Should the worst be realized after years of argumentation, all the goodwill and extraordinary efforts that after some 20 years have led to this unprecedented agreement will have been largely for naught.

Other countries resolve legal difficulties as those facing us today by referring them to constitutional courts before their legislatures take a final decision. The suggestion that Canada establish one of its own has been made many times in the past, but nothing has come from it. Perhaps the time is right to consider the idea.

Meanwhile, a reference to the Supreme Court is available, but the federal government stubbornly refuses to take advantage of it. It seems that references are made only when political capital ensues, such as in the case of the Quebec secession reference, which was highly hypothetical and removed from reality.

Bill C-9 is a landmark bill. It is much more important than Bill C-20, as it is intended to return some sense of pride and self-esteem to members of Canadian society too long neglected and dismissed as second-class citizens. We will be doing them a disservice by voting this bill with so many uncertainties surrounding its legality. Far better be it to clear these up in the time it will take to do so than to have it applied with the knowledge that much, if not all, of it will be struck down by the courts.

The principle of Bill C-9 is not being challenged — far from it. It is a conviction that it stays beyond constitutional limitations that happen to be the fundamental law of this land. To pass it in its present form is to invite years of litigation, misunderstanding and mistrust, as well as to make its application in whole or in part subject to possible repeal.

To take the time needed to resolve the basic constitutional issues will allow, once these are out of the way, an agreement with full legitimacy and with overwhelming support, certainly from this side, whose commitment to the inherent right of self-government for aboriginals remains as strong as ever.

To vote Bill C-9 into law, as we are asked to do this afternoon, is to initiate a period of great uncertainty and constant legal challenge, which can only be to the detriment of the Nisga'a and all those who aspire to similar treatment.

I commend the representatives of the Nisga'a Nation here with us today for having gone through this ordeal and for displaying the patience they have shown through these debates. I assure them that, as much as we are dissatisfied with the content of the bill and the legal challenges that it will face, we are all in favour of the inherent right of self-government. We only wish it were done in proper form. I hope that the Senate, in its sober second thought, will act accordingly.

The Hon. the Speaker: Honourable senators, it being 3:15, pursuant to the order adopted by the Senate on Tuesday, April 11, 2000, it is my duty to interrupt the proceedings so that all questions necessary to dispose of the third reading of Bill C-9 shall be put forthwith and without further debate or amendment.

The question before the Senate, honourable senators, is the motion by the Honourable Senator Austin, P.C., seconded by the Honourable Senator Gill, for the third reading of Bill C-9, and the motion in amendment of the Honourable Senator St. Germain, P.C., seconded by the Honourable Senator Andreychuk, that the bill be not now read a third time, but that it be read a third time this day six months hence.

Will those honourable senators in favour of the motion in amendment please say "yea"?

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen.

The Hon. the Speaker: We will have a standing vote. Please call in the senators. There will be a 15-minute bell.

I remind honourable senators that the subsequent amendments will be in sequence, but I will allow enough time between each so that any honourable senator who wishes to leave the chamber may do so. However, there will be no further 15-minute bells. The vote will take place at 3:30.

• (1530)

Motion in amendment of the Honourable Senator St. Germain negatived on the following division:

YEAS

THE HONOURABLE SENATORS

Andreychuk
Atkins
Beaudoin
Berntson
Bolduc
Buchanan
Carney
Cochrane
Cogger
Cohen
Comeau
DeWare
Doody
Forrestall
Grimard
Johnson
Kelleher
Keon
Kinsella
LeBreton
Lynch-Staunton
Meighen
Murray
Nolin
Roberge
Robertson
Rossiter
Simard
Sparrow
Spivak
St. Germain
Stratton—32

NAYS

THE HONOURABLE SENATORS

Adams
Austin
Bacon
Banks
Boudreau
Bryden
Callbeck
Carstairs
Chalifoux
Christensen
Cook
Cools
Corbin
Fairbairn
Ferretti Barth
Finnerty
Fraser
Furey
Gauthier
Gill
Graham
Hays
Hervieux-Payette
Joyal
Kenny
Kroft
Losier-Cool
Maheu
Mahovlich
Mercier
Milne
Pearson
Pépin
Perrault
Perry Poirier
Poulin
Poy
Robichaud (*L'Acadie-Acadia*)
Robichaud (*Saint-Louis-de-Kent*)
Roche
Rompkey
Ruck
Sibbeston
Stollery
Taylor
Watt
Wiebe—47

ABSTENTIONS

THE HONOURABLE SENATORS

Pitfield
Rivest—2

The Hon. the Speaker: Honourable senators, there are two further amendments. If there are any honourable senators who wish to leave the Senate, will they please do so now? If not, we will proceed with the further amendments.

The next amendment is by the Honourable Senator Sparrow, seconded by the Honourable Senator DeWare:

That Section 3 of the Bill be amended by adding the word "not" following the word "is".

The amended Section 3 will therefore read:

"3. The Nisga'a Final Agreement is not a treaty and the land claims agreement within the meaning of Sections 25 and 35 of the Constitution Act, 1982."

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen.

Motion in amendment of the Honourable Senator Sparrow negatived on the following division:

YEAS

THE HONOURABLE SENATORS

Simard
Sparrow—2

NAYS

THE HONOURABLE SENATORS

Adams
Andreychuk
Atkins
Austin
Bacon
Banks
Beaudoin
Berntson
Bolduc
Boudreau
Bryden
Buchanan
Callbeck
Carney
Carstairs
Chalifoux
Christensen
Cohen
Comeau
Cook
Cools
Corbin
Doody
Fairbairn
Ferretti Barth
Finnerty
Forrestall
Fraser
Furey
Gauthier
Gill
Graham
Grimard
Hays
Hervieux-Payette
Johnson
Joyal
Kelleher
Kenny
Keon
Kinsella
Kroft
LeBreton
Losier-Cool
Lynch-Staunton
Maheu
Mahovlich
Meighen
Mercier
Milne
Murray
Nolin
Pearson
Pépin
Perrault
Perry Poirier
Pitfield
Poulin
Poy
Robertson
Robichaud
(*L'Acadie-Acadia*)
Robichaud
(*Saint-Louis-de-Kent*)
Roche
Rompkey
Rossiter
Ruck
Sibbeston
Spivak
St. Germain
Stollery
Stratton
Taylor
Watt
Wiebe—74

ABSTENTIONS

THE HONOURABLE SENATORS

Cogger
DeWare
Rivest
Roberge—4

The Hon. the Speaker: If there are any honourable senators who wish to leave the chamber before I proceed to the last amendment, please do so. The numbers will be the same, then.

• (1540)

Honourable senators, this is the last amendment to the main motion. The question before the Senate is the motion in amendment moved by the Honourable Senator Sparrow, seconded by the Honourable Senator DeWare:

That Section 27 of the Bill be amended by adding the following:

"which day shall not be earlier than the date upon which the Supreme Court of Canada pronounces on the validity of the Nisga'a Agreement."

The amended Section 27 will therefore read:

"The provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council, which day shall not be earlier than the date upon which the Supreme Court of Canada pronounces on the validity of the Nisga'a Agreement."

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen.

The Hon. the Speaker: Call in the senators. We will proceed with a recorded vote immediately, as per agreement.

Motion in amendment of the Honourable Senator Sparrow negatived on the following division:

YEAS

THE HONOURABLE SENATORS

Atkins	Kinsella
Buchanan	LeBreton
Carney	Lynch-Staunton
Cogger	Meighen
Cohen	Murray
Comeau	Nolin
DeWare	Roberge
Doody	Robertson
Forrestall	Rossiter
Grimard	Simard
Kelleher	Sparrow
Keon	Stratton—24

NAYS

THE HONOURABLE SENATORS

Adams	Kenny
Andreychuk	Kroft
Austin	Losier-Cool
Bacon	Maheu
Banks	Mahovlich
Beaudoin	Mercier
Bolduc	Milne
Boudreau	Pearson
Bryden	Pépin
Callbeck	Perrault
Carstairs	Perry Poirier
Chalifoux	Poulin
Christensen	Poy
Cook	Robichaud (*L'Acadie-Acadia*)
Cools	Robichaud (*Saint-Louis-de-Kent*)
Corbin	Roche
Fairbairn	Rompkey
Ferretti Barth	Ruck
Finnerty	Sibbeston
Fraser	Spivak
Furey	Stollery
Gauthier	Taylor
Gill	Watt
Graham	Wiebe—51
Hays	
Hervieux-Payette	
Johnson	

ABSTENTIONS

THE HONOURABLE SENATORS

Berntson	Rivest
Joyal	St. Germain—5
Pitfield	

The Hon. the Speaker: Honourable senators, we are back to the main motion. It was moved the Honourable Senator Austin, P.C., seconded by the Honourable Senator Gill, that Bill C-9 be now read a third time.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen.

The Hon. the Speaker: Call in the senators. We will have a standing vote immediately, as per agreement.

Motion agreed to and bill read third time and passed on the following division:

YEAS

THE HONOURABLE SENATORS

Adams	LeBreton
Austin	Losier-Cool
Bacon	Maheu
Banks	Mahovlich
Boudreau	Mercier
Bryden	Milne
Callbeck	Pearson
Carstairs	Pépin
Chalifoux	Perrault
Christensen	Perry Poirier
Cook	Pitfield
Cools	Poulin
Corbin	Poy
Fairbairn	Rivest
Ferretti Barth	Robichaud
Finnerty	(*L'Acadie-Acadia*)
Fraser	Robichaud
Furey	(*Saint-Louis-de-Kent*)
Gauthier	Roche
Gill	Rompkey
Graham	Ruck
Hays	Sibbeston
Hervieux-Payette	Spivak
Johnson	Stollery
Joyal	Taylor
Kenny	Watt
Kroft	Wiebe—52

NAYS

THE HONOURABLE SENATORS

Atkins	Keon
Berntson	Kinsella
Buchanan	Lynch-Staunton
Cogger	Robertson
Comeau	Rossiter
DeWare	Simard
Forrestall	Sparrow—15
Grimard	

ABSTENTIONS

THE HONOURABLE SENATORS

Andreychuk	Meighen
Beaudoin	Murray
Bolduc	Nolin
Carney	Roberge
Cohen	St. Germain
Doody	Stratton—13
Kelleher	

• (1550)

The Hon. the Speaker: Are you rising on a point of order, Senator Carney?

Hon. Pat Carney: Honourable senators, we have the right, on abstention, to stand. I wanted to record that, since this is the first of 50 treaties in B.C. and since there is conflicting evidence as to its constitutionality, I can neither vote for it nor against it.

Hon. Gerry St. Germain: Honourable senators, also on a point of order, before coming to the Senate today, I spoke to my brothers and sisters in the Gitanyow and Gitxsan nations. They asked me to do what I did here today. Today is a sad day, in that our brothers and sisters have been victimized.

Some Hon. Senators: Order!

The Hon. the Speaker: Senator St. Germain, a senator is allowed to explain his or her vote but not to reflect on the vote.

Senator St. Germain: Very well, Your Honour. In that case, I will explain the vote.

Honourable senators, it is at the request of the Gitanyow and the Gitxsan nations that I abstained from voting on this important piece of legislation. It is important to the Nisga'a people and important to the people of British Columbia, and we must go forward; however, we cannot go forward while trampling on the rights of the minorities.

Hon. A. Raynell Andreychuk: Honourable senators, I also rise on the fact that I abstained. I reiterate what I said yesterday: I will not take sides, as a non-aboriginal, and choose between the Gitxsan and Gitanyow on the one side and the Nisga'a on the other.

[*Translation*]

ROYAL ASSENT

NOTICE

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

RIDEAU HALL

April 13, 2000

Mr. Speaker,

I have the honour to inform you that the Right Honourable Adrienne Clarkson, Governor General of Canada, will proceed to the Senate Chamber today, the 13th day of April, 2000, at 6:00 p.m., for the purpose of giving Royal Assent to certain bills of law (C-6, C-9 and C-13).

Yours sincerely,

Judith A. Laroque
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

[*English*]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise on a point of order. His Honour has just advised us of the message received from Government House. It is my understanding that it is the practice of this place that, when Her Excellency the Governor General comes to the Senate for Royal Assent, the first minister, the Prime Minister, will be present. I wonder if we can be advised if that custom will be respected and if the Prime Minister is on his way back from the Middle East.

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, on this occasion, because of important work abroad, the Prime Minister will not be with us this afternoon.

Senator Forrestall: You didn't have a Sea King to send for him!

The Hon. the Speaker: Honourable senators, I presume that the point of order raised by Senator Kinsella has been responded to and that there is no need for further statements by the Speaker or to take the matter under advisement. The matter is closed.

[*Translation*]

BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

Hon. Pierre Claude Nolin: Honourable senators, before I begin, I should like to request leave to exceed the 15-minute period allocated to me by the *Rules of the Senate*.

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

[*English*]

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, the request for leave was for how long?

Senator Kinsella: A short period of time.

Senator Nolin: Your Honour, must I state a condition? I am just asking for leave.

The Hon. the Speaker: Honourable Senator Nolin, you need not make any statement. Remember, however, that it is then open for someone to refuse leave. That is a risk that you take.

[*Translation*]

Senator Nolin: If I have to specify a period of time for my speech, it would be to seek leave to exceed the 15 minutes allotted by the rules.

[*English*]

The Hon. the Speaker: Honourable senators, there is a request by Honourable Senator Nolin for leave to extend his comments beyond the 15-minute period.

Senator Hays: Honourable senators, when leave is requested, it is in order to ask why. My question is simply this: Is the honourable senator asking for unlimited leave? Will he be more than an hour? I think that is a fair question.

Senator Nolin: For 15 minutes.

Senator Hays: I know that His Honour is considering a ruling. I have tried to be sensitive in the way in which I have conducted myself as Deputy Leader of the Government; however, I think our rules provide that I can ask that question. How long does the honourable senator want?

[*Translation*]

Senator Nolin: Honourable senators, I will accept the ruling of the Chair when it is issued. In the meantime, I shall exceed the 15 minutes provided in the rules. I hope I shall be less than an hour, but I cannot know how much time I shall need, nor how many questions I will be asked.

• (1600)

[*English*]

Senator Hays: Honourable senators, on the understanding that the honourable senator will be less than an hour, I would agree to Senator Nolin proceeding with leave.

• (1600)

Hon. Eymard G. Corbin: Honourable senators, on a point order: I agree with my deputy house leader. However, I believe that, at this stage, we need not anticipate. It could well be that the senator might terminate his speech in 15 minutes. Why rush? In 15 minutes, put the question.

Senator Atkins: That is exactly right.

[*Translation*]

Senator Nolin: Honourable senators, I have asked for leave and I am waiting for the answer.

The Hon. the Speaker: Does Senator Gauthier wish to speak?

Hon. Jean-Robert Gauthier: Honourable senators, I spent 21 years in the House of Commons and I remember that requests such as the one from Senator Nolin could be used for filibusters. I want to make sure that he does not intend to engage in filibustering on Bill C-20 and that he will speak for a reasonable time.

Senator Nolin: Honourable senators, I do have a text that will exceed the 15 minutes allowed for my speech, but I do not think it will go beyond one hour. It depends on the questions that will be put to me.

[*English*]

Hon. Anne C. Cools: Honourable senators, an hour can hardly be classified a filibuster.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

The Hon. the Speaker: Leave is granted. Please proceed, Honourable Senator Nolin.

[*Translation*]

Senator Nolin: Honourable senators, let me say from the outset that I would have preferred to talk about a project to reform Canadian federalism. Such a project would have been in line with the commitments for a major reform of Canadian federalism that the Prime Minister of Canada made on two occasions during the last week of the 1995 referendum campaign.

Unfortunately, this is not the case. Instead, I will comment on Bill C-20, to give effect to the so-called requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference. As you know, I was very closely involved in the three Quebec referendums, the first one in 1980 on sovereignty-association, the second one in 1992 on the Charlottetown accord, and the last one in 1995 on sovereignty, with or without a partnership with the rest of Canada. Following the very close results at the last referendum, on the evening of October 30, 1995, many Canadians realized that the sovereignty option could break up Canada.

A feeling of panic — and I am weighing my words carefully — took hold of people outside Quebec. Canadians urged the federal government to do everything within its power to keep Canada from again drifting to the edge of the abyss. During the 1995 referendum, I received a number of calls from Canadians worried about the future of our country. Canadians from all walks of life, including federal government ministers and provincial premiers, made these worried calls, and my response at the time was almost always the same. All Quebec federalists are doing everything in their power to ensure that Canada remains united and prosperous.

If I had to speak to these same people again today, I would probably not be able to tell them that the storm had passed, because the federal government has done nothing significant since 1995 to convince Quebecers to opt for Canada; on the contrary.

Honourable senators, what our house is instead considering is a bill that defines the rules under which Quebec will be permitted to legally secede from the rest of Canada. Instead of undertaking a broad reform of Canadian federalism, the federal government has decided to plunge headfirst into the famous black hole to which Jean Charest referred in describing his concerns about taking a hard-line approach against Quebecers. This is what is commonly known as Plan B.

I sincerely believe that the former leader of the Progressive Conservative Party was describing exactly what Bill C-20 represents. If I may make an analogy with astronomy, the study of black holes leads to the unknown; one knows when one will enter, but not when one will leave. It can therefore be said that the clarity bill is a political black hole that would threaten the political and social stability of Canada were it ever to be implemented.

On March 23, I asked the government leader on what constitutional authority the government was relying to introduce Bill C-20, although I did not contest the executive's authority to act in this area. Unfortunately, the government leader never gave a clear answer to the question.

Honourable senators, it is therefore important for this house to consider in greater depth the legality of the action being taken by the Minister of Intergovernmental Affairs in this matter. In this respect, the Supreme Court opinion regarding the secession of Quebec can enlighten us.

It is worth pointing out that the court had to justify its right to decide sensitive issues because the Constitution has nothing to say about a province seceding. Its ruling is based on the four underlying principles of the Constitution: democracy, constitutionalism, the rule of law, and protection of minorities.

In the aftermath of the judgment, a number of observers stressed the point that the court was taking a considerable risk in deciding to write a new chapter to the Constitution, one its authors preferred not to open in 1867 and 1982 for obvious political reasons. As well, it did so in such a way as to transfer the bulk of powers relating to the secession of Quebec to the federal government.

In a recent C.D. Howe Institute study relating to Bill C-20, Patrick Monahan challenged the solidity of the constitutional principles on which the highest court in the land based its decision on a matter of such seriousness. He wrote:

> If the courts are free to add to the Constitution through the use of unwritten norms whenever they discover a matter not provided for in the text, they have, in effect, an open-ended license to rewrite the document at will. They can incorporate wholly new norms or obligations, even where the political authorities have determined that such matters should not be constitutionalized and should, instead, be left to the realm of ordinary politics.

At several points in the reference, one has the feeling that the court is hesitant in its analysis. In order to avoid coming out too clearly on highly political issues, it describes its mandate as:

> ...limited to the identification of the relevant aspects of the Constitution in their broadest sense.

The self-limitation that it practises, its delineation of questions that fall within its role and those it considers to be the political aspects of constitutional negotiations strike me as totally justified.

Paragraph 98 indicates that the court is merely attempting to give a legal interpretation of a political question. In paragraph 100, this position is reiterated by stating that it is the responsibility of the political actors to determine what constitutes a clear question and a clear majority, according to the circumstances of the time, before undertaking negotiations.

They would be the only ones to have the information and expertise to decide when these ambiguities would be resolved one way or another, depending on the conditions under which a future referendum might be held. On the other hand, the Supreme Court justices do not explicitly define what they mean by "political actors". The only reference to that notion is found in paragraph 88, where they refer to the democratically elected representatives, to the participants in Confederation.

In short, the court mentions that there is a reciprocal obligation to negotiate if the secessionist option is supported by a clear majority following a clear question. Moreover, the secession of Quebec must take place through a constitutional amendment under the Constitution Act, 1982.

Nowhere in its opinion does the highest court in the land impose on the federal government the adoption of a law to better position itself to face the Quebec government regarding this issue.

• (1610)

As the former chief justice of the Supreme Court of Canada, Antonio Lamer, so appropriately pointed out in an interview published in *Le Devoir*, on January 11:

> There is a distinction to be made between a judgment and a reference. The Quebec Secession Reference, like any other reference, is merely an opinion. Neither Quebec nor the rest of Canada is forced to comply with our opinion. If it were a judgment, it would be binding.

Like me, a number of political commentators, academics, politicians and Canadians wonder about the constitutional legality of the federal government's measure. In that regard, the preamble to section 91 of the Constitution Act, 1867, can be useful. It reads:

> It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces...

On October 31, 1995, the day after the 1995 referendum, the current Prime Minister of Canada said on *The National* on the English network of the CBC that he would use the preamble to section 91 to determine the question of the next referendum in Quebec.

Honourable senators, according to Professor Peter Hogg, in the third edition of *Constitutional Law of Canada*, the preamble is in some sense the residual power often described as the general power of the Government of Canada. However, its use has been supported since 1867 by a number of legal decisions by the Privy Council and by the Supreme Court of Canada.

Since 1867, there have been three theories on the interpretation of this preamble. Again, according to Professor Hogg, the first is that of national dimensions, one characteristic of which is that the matter at issue must not be related to any jurisdiction already present in section 92 of the Constitution Act, 1867, which concerns the powers of the provinces. However, if the federal government can argue that certain actions by a province indicate it is unable to properly fulfil its responsibilities in a specific area and that this fact has an impact on the other provinces or the country as a whole, jurisdiction may revert to the central government. Professor Hogg describes this latter point as the test of provincial incompetency.

The second theory is that of national emergency. The federal government may cite it in cases of armed conflict, social insurrection, or periods of grave economic instability in order to temporarily take over powers normally reserved for the provinces. This is a limited power and is restricted to a period of time.

Finally, there is the theory of residual power. As Guy Tremblay and Henri Brun point out in the second edition of *Droit constitutionnel*, there are few legal interpretations of this aspect of the preamble.

Having presented these three theories on the interpretation of the preamble, I note that the constitutionality of Bill C-20 does not hinge on the theory of a national emergency, much less on the theory of national dimensions. Although the decision by Quebec may affect the other provinces of Canada, it is rather dangerous to say that Quebec would fail the test of provincial incompetency in holding its own referendum. To reach this conclusion, I considered the transparency of the Quebec electoral process, the strict provisions of the Quebec Referendum Act and the prerogative of the National Assembly over the definition of the question and of the majority required. Quebecers have the right to decide their own future. The opinion of the Supreme Court at paragraphs 65, 66, 68 and 86 recognized the legality of the referendum action.

Honourable senators, all that remains is to determine whether the federal government may act by virtue of its residual power. After much reading and many days of thinking, I find it difficult to say. I would have liked to be able to give an answer. In committee, I imagine that we will be able to answer in the affirmative or the negative. So far, this interpretation has been infrequently used to justify federal authority or the extension thereof. No court has ever ruled on Ottawa's role with respect to the secession of a province.

The only witness who quickly raised this rather important issue during consideration of Bill C-20 in committee in the other place was Guy Lachapelle, a professor of political science at Concordia University. I have absolutely nothing against professors of political science but they are not lawyers. They understand the nuances of constitutional law, but they are less knowledgeable about using and interpreting the nuances involved in an understanding of constitutional law. Guy Lachapelle said:

> There indeed appears to be no legal basis for proposing this sort of bill. There is no agreement with respect to the election laws that would be subject to the approval of the federal Parliament and, in the case before us, there is certainly no agreement as to the definition of terms.
>
> ...there is no specific agreement or legislation, except for section 91, that could still be used, that could validate an exercise such as this one. Once again, in my view, this bill undermines not only the rights of Quebec, but of all Canadian provinces and citizens as well.

I therefore believe, honourable senators, that it is important to again tackle the definition of the political players in order to analyze the constitutionality of Bill C-20. As I said earlier, the Supreme Court stated in its opinion that it was up to the political players and not the courts to define how Quebec's secession could be negotiated. Federally, political action does not always take the form of legislative measures. Yet the government has opted to pass a bill according to which it will be possible to ask the court formally to step in. This time, it will be able to bring down a ruling, not just give its opinion. So the courts will be called upon formally to intervene in the debate and say whether or not the federal Parliament has the right to act in this matter.

At the present time, Bill C-20 gives only the MPs sitting in the House of Commons this responsibility for determining whether the question and the majority are clear, before engaging in negotiations with Quebec. This raises serious questions, because they are not only actors in the sense of playing a role within Parliament and the executive, but they are also actors within their respective electoral districts. They need to represent not only the interests of their party, but also those of their constituents.

Under this bill, however, it is fairly likely that they will be pressured by cabinet and the party line. The dilemma is even more complex when Quebec MPs have to reach decisions on these matters, or when they come to the negotiating table. What will they do if Quebecers deem that a question on sovereignty-association is clear or that a simple majority is sufficient to initiate negotiations with the rest of Canada?

As well, the provinces, in accordance with the principles of Canadian federalism as set out by the Supreme Court, must also play an important role in this process. According to Bill C-20, they have only an accessory role, lacking the ability to impose their definition of a clear question or of the issues involved.

That brings me to two questions. Would some provinces that were more affected by the secession of Quebec take a different direction than that adopted by the House of Commons, in order to ensure that negotiations were possible? Can the federal executive monopolize the right to decide on the clarity of the question and the majority in favour that this question requires?

As far as Quebec is concerned, the third paragraph of the preamble to Bill C-20 recognizes that the National Assembly is at least entitled to consult its population by referendum on any issue and is entitled to formulate the wording of its referendum question. Clause 1, however, limits this statement considerably, by stating that the House of Commons shall consider the question and determine whether it is clear. The question will, moreover, be considered invalid if it contains the sovereignty-association option or an offer of political and economic partnership with the rest of Canada. Consequently, the question must address nothing but secession; otherwise the federal government does not have to engage in any negotiation whatsoever.

• (1620)

However, a reference of the Privy Council in 1919 on the constitutionality of the provincial referendums in Manitoba, "The Initiative and Referendum Act", recognized the right of provinces to hold referendums on matters of concern to their jurisdictions alone, on the condition they be consultative. That included the determination of the terms of consultation. However, the results were binding on neither the federal Parliament nor on the provincial legislative assemblies.

At the moment, the Quebec Referendum Act provides for consultative referendums. According to Henri Brun and Guy Tremblay, Quebec has always assumed that the Canadian constitutional system permitted only this type of referendum. This rule was observed in the 1980 and 1995 referendums.

In addition, according to Professor Henri Brun, in a legal opinion published in *Le Devoir* in January, the title of Bill C-20:

> ...suggests the idea under which the Supreme Court of Canada imposed the requirement of clarity on the federal Parliament. It is, on the contrary, up to the Quebec legislature, where appropriate, to give effect to the requirement for clarity expressed by the Supreme Court.

This is why, honourable senators, Bill C-20, in my opinion, contravenes the federal principle, indeed the notion of residual power, because the House of Commons, the only political player duly recognized, could impose on the people of Quebec and on the National Assembly its definition of what constitutes a clear question and a clear majority. Bill C-20 dictates immediately the decision to be taken by the House of Commons, regardless of the type of question put by the National Assembly of Quebec.

In this regard, the provisions of clauses 1 and 2 of this bill are eloquent. As the former leader of the Quebec Liberal Party, Claude Ryan, put it before the committee of the other place, which was examining Bill C-20:

> If the National Assembly has the right to consult its population on a proposal to secede, it must be able to do so free from any constraint or interference from another parliament.

A little further along he added:

> Under our system, each level of government is deemed sovereign within its own jurisdiction...The authority to determine the clarity of the question that would be given to the Parliament of Canada would mean it would obviously interfere with an ongoing referendum campaign.

In that sense, the population of Quebec must be considered a major "political actor" in the process.

I conclude this first part of my speech by saying that it is premature for me to voice an opinion on the constitutionality of this bill. It is clear that, since there is no urgency to legislate on this issue, the federal government could have done things differently, without subjecting the House of Commons, the Senate, the provinces and the National Assembly to the compelling provisions of Bill C-20.

During the 1980 and 1995 referendums, the federal government said that the question put to Quebecers was not clear, but it went no further. This is probably because, at the time, the government had deemed it wiser not to go further, so as to keep all its options available, following a possible victory for the sovereignists.

In fact, in the recently published study by the C.D. Howe Institute to which I referred earlier, Claude Ryan said:

> The Constitution is silent on the question of secession by a province belonging to the federation. The Supreme Court could have concluded from this fact that, lawmakers having decided that this matter be left to political agents, it was not the role of judges to impose their judgment. Many factors favoured such an interpretation, notably the fact that constitutional silences sometimes mean that the document's framers, while not intending to deny the existence of certain realities, thought it wiser not to touch on them explicity at all than to do so in an unsatisfactory way.

Is Bill C-20 the best response to the Supreme Court opinion? I do not think so. Therefore, it is critical that the Senate and the committee that reviews Bill C-20 examine the legality and legitimacy of the federal initiative, based on the fundamental laws that govern our country's political and social life. I must tell you that, in Canada, to create false hopes for Canadians, and particularly English Canadians, can be a very dangerous thing from a political point of view.

Honourable senators, I will now look at the claims made by the Minister of Intergovernmental Affairs regarding the effectiveness of his bill. Personally, I do not share his optimism. As is evident from the first part of my speech, the federal government's approach to the threat of Quebec's secession seems to be purely constitutional. It does not take into account the many social and political factors that could derail that approach immediately after a sovereignist victory.

A careful reading of the Supreme Court opinion on the secession of Quebec is enough to convince us of the limitations of the legal framework with which Ottawa wishes to counter Quebecers' political action.

First, in paragraph 83, the highest court in the land recognizes that "Secession is a legal act as much as a political one". On the issue of economic and political interests, unstable political climate, minorities and borders, which would be the primary focus of negotiations following a sovereignist victory, the court has this to say in paragraph 97:

> In the circumstances, negotiations following such a referendum would undoubtedly be difficult. While the negotiators would have to contemplate the possibility of secession, there would be no absolute legal entitlement to it and no assumption that an agreement reconciling all relevant rights and obligations would actually be reached. It is foreseeable that even negotiations carried out in conformity with the underlying constitutional principles could reach an impasse.

Finally, after 107 pages of establishing that the unilateral secession of Quebec was illegal under Canadian and international constitutional law, the court reaches a rather surprising conclusion in paragraph 155:

> Although there is no right, under the Constitution or at international law, to unilateral secession...this does not rule out the possibility of [a]...declaration leading to a de facto secession.

Professors Peter Hogg, Henri Brun and Guy Tremblay say much the same in their respective works, which I quoted from earlier. Such statements which, I remind you, come from the highest court in the land, are plain enough to cast doubt, as I said earlier, on the success of any action the federal government may take in the eyes of Canadians.

It is therefore understandable that the government only picked up some 20 paragraphs from the opinion for its press kits distributed to the media in order to justify its actions. They want to avoid addressing any real questions, even if that means a lack of transparency and playing with Canada's future.

Honourable senators, the government's lack of transparency on the true consequences of such an initiative is far from reassuring. It cannot help but contribute to a false sense of security. Many Canadians might be tempted to believe that this initiative will, to all intents and purposes, prevent Quebec from separating.

In this connection, some of the comments from English Canada, such as those made by Roger Gibbins of the Canada West Foundation, seem less conclusive about the true impact of Bill C-20. When he appeared before the committee in the other place, Mr. Gibbins said:

> There's a strong possibility that Western Canadians assume the clarity bill goes much farther than it does. It would not surprise me, for example, if Western Canadians believed the bill both defines the question that might be posed to Quebecers and sets the threshold at which a Quebec vote would trigger a response from the Government of Canada. Bill C-20 falls short, perhaps well short, of public expectations in these respects.

• (1630)

In the same vein, Gordon Gibson of the Fraser Institute in British Columbia summarized his opinion of Bill C-20, which we are looking at here, as follows:

> First, the bill is unnecessary. Second, the bill will be ineffective in the real world.

As honourable senators can see, it is not just those of us on this side who describe this bill as dangerous and inapplicable to the real world of politics.

Honourable senators, the bill creates some mythical thinking among a number of Canadians. I believe it is important to re-establish certain facts about some misunderstood aspects of this bill, and I am taking advantage of the time allotted to me today to do so. I will focus particularly on the determination of the wording of the question, the clarity of the majority of Quebecers voting in favour of the sovereignist option, and the obligation to negotiate that falls to the federal government.

Let us begin with the wording of the question. Outside of constitutional and legal considerations, unless the polls show an upswing for the sovereignty option — which is not currently the case — it is assumed, for political reasons, that the government of Lucien Bouchard will never ask the question favoured by Ottawa. This is understandable if it hopes to obtain a majority vote for its option. As I have already said, Bill C-20 will not be very effective in imposing the wording of the question on the Quebec legislature.

The Supreme Court never suggested that the question should concern a specific option when it talked of a clear question. Careful reading of the opinion of the Supreme Court shows that not only did the court not define a clear question, it expressly refused to do so. At paragraphs 84 and 87, we see that the notion of a clear question is used only as a condition of legitimacy of a particular process of constitutional amendment. As Andrée Lajoie, a law professor at the University of Montreal, pointed out in a legal opinion on Bill C-20:

> Therefore, the clarity requirements cannot include the obligation to limit the question to secession or to make it unequivocal. The court was right in avoiding this trap: there is, objectively, no unequivocally clear question.

Therefore, the question may be on sovereignty-association or on partnership and not solely on the Minister of Intergovernmental Affairs' hard issue of secession. The opinion of the Supreme Court in this regard imposes no constraint on the National Assembly in determining the wording of the question. According to Professor Lajoie, it will be up to the political actors in Quebec and the people of Quebec alone to define an acceptable question.

However, the highest court in the land goes further by affirming that, if the political actors in the rest of Canada, including the federal Parliament, refuse to honour the collective position of Quebecers on the clarity of the question, they face judgment by the international community on their will to negotiate in good faith as the Supreme Court indicated itself at paragraphs 152 and 154 of its opinion.

Honourable senators, contrary to the restrictive rules of the bill, a simple official statement by the Prime Minister of Canada on the clarity of the question during Quebec's referendum campaign would be enough in the eyes of Quebecers and Canadians. It would be more than enough for Ottawa to express its reservations about the question. Both Pierre Elliott Trudeau in 1980 and Jean Chrétien in 1995 had warned the Government of Quebec that they would not promise to go along with the referendum verdict. Both issued warnings before the referendum, because they were not satisfied that the question was clear. This option has the not insignificant advantage of leaving all options open in the event of a sovereignist victory.

The provisions of Bill C-20 do not provide this flexibility and could even put the federal Parliament and the rest of Canada in an untenable position.

Unfortunately, honourable senators, I believe strongly that the same comments can be applied with respect to the majority necessary for the government to enter into negotiations with Quebec. We can already say that if the members in the other place do not find the question clear, it would be only natural that it would not be held to be clear if a majority of Quebecers voted in favour of sovereignty.

Clause 2(2) of Bill C-20 defines the factors that the House of Commons must take into account in considering whether there has been a clear expression of a will by a clear majority of Quebecers that Quebec secede. Members must take into account: first, the size of the majority of valid votes cast in favour of the secessionist option; second, the percentage of eligible voters voting in the referendum; and, third, any other matters or circumstances they consider to be relevant. For a bill that claims to clarify the federal government's position on this issue, the government could have tried harder.

In the past few months, the Prime Minister of Canada and his Minister of Intergovernmental Affairs have indicated on numerous occasions that the simple majority rule was not enough to fit the definition of a clear majority of Quebecers supporting secession. According to an article published in the *National Post*, in November 1999, the Prime Minister told some of his advisors that 60 per cent would be the lowest acceptable threshold to say that a clear majority of Quebecers support the sovereignist option. The Prime Minister's comments were probably based on a poll conducted between June 9 and August 2, 1999, for the Privy Council of Canada, in which 5,000 Quebecers participated. According to that poll, only 37 per cent of Quebecers felt that the simple majority rule should apply to the next referendum, while 60 per cent of the respondents were opposed to that. By contrast, 70 per cent of Quebecers agreed with using a 60 per cent threshold, while 27 per cent were opposed to the idea.

With such encouraging results, it would be important to determine what led the federal government not to go further in following the logic behind the clarity bill. In my opinion, to avoid creating false hopes, Ottawa should have included a percentage that would have stated once and for all what is a clear majority in the eyes of the Prime Minister and of the Minister of Intergovernmental Affairs.

Is this omission not likely to generate confusion among Quebecers, considering that all the political parties in Quebec and most social actors in that province agree with the simple majority rule?

Honourable senators, the Supreme Court expressed its views many times regarding the nature of the referendum result. However, it has always used the expression "clear majority". The only time it does not is in paragraph 87, precisely to warn voters that they would be wrong to give that expression a meaning other than the one given by the ordinary meaning of the words. The court stresses then that it refers to a clear majority in the qualifying sense, without going further. In a legal opinion on the interpretation of a clear majority, Henri Brun suggests that it means the greater number and nothing else. According to him:

> The majority referred to by the Supreme Court to impose an obligation to negotiate is the 50 per cent majority of the votes that the sovereignist option would get in a referendum, not the approximate evaluation of the existence of a support by a majority for sovereignty.

In 1978, the Labour government in the United Kingdom introduced a bill to create a legislative assembly for Scotland. The British government decided this required a referendum by the Scots. It had recognized a simple majority as acceptable in determining the outcome of the vote. However, in order for the Parliament to be created, the proportion of yes votes, votes in favour, had to be a minimum of 40 per cent of registered voters. In 1997, the British Parliament's white paper, which was again to lead to the creation of a Parliament for that region and the devolution of powers, stated that the rule of the simple majority would apply to determine the referendum outcome.

Moreover, as Gordon Gibson said to the committee:

> My argument is that if a question with any tincture of sovereignty attached to it ever gets more than 50 per cent plus one, you are into a new world, and I don't know how that world will unfold. The only thing I know is that a lot of control is lost at that point. The day that happens you are into negotiations, whether you want to be or not.

• (1640)

It can be stated, therefore, that the 50 per cent plus one figure has a certain magical power and a democratic legitimacy other figures lack. It is hard, for example, to find precedents for majority requirements of 60, 65 or 70 per cent and, when there are any, experience has often shown us that there is no piece of legislation that has ever kept a people from the path to independence.

In 1990, the Kremlin was heavily shaken by popular agitation in three of the Baltic Republics and adopted something similar to Bill C-20 in order to block their secession. It called for a 50 per cent plus one vote before Moscow would enter into negotiations with the new States. Gorbachev, then President of the Soviet Union, changed the law, raising the required figure to two-thirds of the votes cast.

Ten years later, it is important to note that this legislation impacted very little on the process toward sovereignty by these three republics. At any rate, it did not prevent them from seceding.

Thus, the government must recognize that a clear majority means 50 per cent plus one vote and nothing else, otherwise it will lead Canada into an impasse. As former prime minister Pierre Elliott Trudeau said so appropriately regarding the simple majority rule:

> Democracy truly shows its faith in mankind by letting itself be governed by the 51 per cent rule. Because even though all men are equal and every one is the seat of a pre-eminent dignity, it inevitably follows that the happiness of 51 individuals is more important than that of 49. It is therefore normal that *ceteris paribus* and given the inviolable rights of the minority — the decisions made by the 51 individuals take precedence.

Honourable senators, I now want to briefly discuss the issue of the participation rate required to determine if the majority of Quebecers who vote in favour of sovereignty is clear. The Minister of Intergovernmental Affairs should also tell us if the participation rates reported by Quebec's chief electoral officer — that is about 95 per cent of eligible voters at the 1995 referendum, 85.6 per cent at the 1980 referendum and 82.7 per cent at the 1992 referendum on the Charlottetown Agreement — are clear participation rates in the eyes of the federal government. It is very rare to have such a high rate of participation in an election or a referendum.

By comparison, according to *Policy Options*, which is published by the Institute for Research on Public Policy, the participation rate at the federal election was 75 per cent in 1984, 75.3 per cent in 1988, 69.6 per cent in 1993 and 67 per cent in 1997. It would be interesting to know what the federal government would do if 55 per cent of Quebec voters supported sovereignty, with a participation rate of 90 per cent.

I want to draw to your attention the lack of a comprehensive list of objective criteria in addition to the majority threshold and the participation rate required to determine if a clear majority votes in favour of sovereignty. Clearly, if such a scenario occurred, federal members of Parliament would be guided by emotions, indignation and anger in their analysis. Impartiality and reason will definitely not prevail during that process, even though Bill C-20 claims the opposite. As with the issue of a clear question, it is disappointing to see that the provinces and the Senate do not have a more prominent role to play in the process.

Honourable senators, from this analysis I conclude this part of my speech by affirming that the restrictive and obscure provisions of Bill C-20 on the clarity of the question and the majority will have an impact on the obligation to negotiate defined by the opinion of the Supreme Court.

Thus the effect of Bill C-20 is that the federal government, for purely political reasons, seems to want to abandon negotiation with Quebec, as it said in the 1980 and 1995 referendums. Officially, Ottawa seems to recognize the prerogatives of the National Assembly. In practice, it wants to impose its political opinion through a bill, regardless of what Quebecers decide, and so, with Bill C-20, the federal government is considerably restricting the conditions under which it would have to negotiate the terms of Quebec's secession and is thus promoting a unilateral declaration of sovereignty. Accordingly, by tying its hands voluntarily, Ottawa is jeopardizing the political and social stability of the rest of the country if it refuses to negotiate in good faith the terms of secession with Quebec.

Honourable senators, I would remind you that governments have a mandate to ensure the security and prosperity of their citizens and not to manipulate them in the service of their partisan interests by Machiavellian measures like Bill C-20. The Minister of Intergovernmental Affairs is restricting himself to inconclusive theoretical models with little link to reality in defending Bill C-20. However, with his university experience, he should know that few declarations of secession have followed this model in the past hundred years. We need only think of the American revolution of 1776, of the period of decolonization between 1948 and 1970 and of the breakup of Yugoslavia and the Soviet Union.

Quebec sovereignists have always said that they were prepared to negotiate with the federal government the terms of Quebec's secession. At the end of November, Premier Bouchard said that:

> If this is the position of the federal government after a yes vote, the doors will be wide open for a unilateral declaration of independence with the authority of the decision by the Supreme Court.

Honourable senators, with what I have just said, if I were a citizen of Ontario, Alberta or New Brunswick, I would be very worried about the fact that not only is this bill ineffective, but it makes no provision for an emergency plan for the rest of Canada should Quebec vote to leave.

According to Alan C. Cairns, a well-known professor of constitutional law at the University of Saskatchewan, the Supreme Court apparently addressed this question rather than focusing solely on Quebec. According to him:

> A new Canada will emerge from the ruins of the old as a distinct state, with almost no preparation for assuming this new status by either governments or the population.

The political and social disorganization that would follow a unilateral declaration of independence by Quebec could have very serious consequences for the safety of Quebecers and Canadians. In addition it would greatly weaken the federal government's negotiating power and its international reputation. The public must be aware of this.

Honourable senators, in conclusion, I believe that there was nothing urgent that justified the government in rushing to introduce a bill as incomplete, unrealistic and probably unconstitutional as this one. To hear the government tell it, there could be a referendum on sovereignty at any minute, but the signals from Quebec suggest otherwise.

Last week, during a visit to France, Lucien Bouchard said that the search for winning conditions as a prelude to a referendum was well and truly over. While Quebec's politicians discuss federalism and sovereignty in their respective corners, a new poll conducted for the Société Radio-Canada by Léger and Léger shows that the constitutional debate holds very little interest for Quebecers. About 55 per cent of them said sovereignty is an outdated concept, compared to 41.5 per cent who support the sovereignist project. Seventy-one per cent of Quebecers have had enough of the constitutional wrangling. They want to move on to something else, as our colleague Senator Bacon said so eloquently this week. As Alain Dubuc, senior editor of *La Presse*, recently said:

> Quebecers, both federalists and sovereignists, have experienced too many failures, alternating between referendum defeats and aborted reforms of Canadian federalism. This national debate has led to Quebecers wasting their creative energies in pointless battles, subordinating the true needs and priorities of Quebecers to nothing more than the interests of the two opposing options.

For all the reasons I have given during my speech, then, I invite you to vote down Bill C-20. It does not respect the democratic tradition of Quebec and of Canada. It runs counter to the spirit of our founding fathers and contrary to the constitutional principles which have established the international reputation for tolerance and respect of freedom of expression our country enjoys. I strongly believe that we did not need a botched bill that only divides the population further for purely political considerations.

As we begin a new millennium, the Minister of Intergovernmental Affairs could have shown some optimism about the future of the Canadian federation. He has not.

• (1650)

Honourable senators, all that remains is to wait for history to decide whether this initiative will succeed in the future. I do not think it will.

I worked along with a number of you, for instance Senator Joyal, during the 1995 referendum. Imagine for a moment Senator Joyal and I getting together every day at 7 a.m. We tried to keep Canada together. Imagine us getting the news one morning that the House of Commons has decided, in good faith, that the referendum question was unclear. Ask us if that would help us in our efforts to keep Canada united. It would not. Do you think that Quebecers would accept being told by the House of Commons: "Your question is not clear. We will not proceed further. We will have nothing more to do with you"? That is not how things work in the real world. At some point, people need to wake up and tell Stéphane Dion this is not what the political reality of Quebec is all about.

On motion of Senator Hays, for Senator Hervieux-Payette, debate adjourned.

[*English*]

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Raymond J. Perrault moved the second reading of Bill S-11, to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable.

He said: Honourable senators, the enactment of this bill would protect the right of health practitioners and other persons to refuse, without fear of reprisal or other discriminatory coercion, to participate in medical procedures that offend a tenet of a person's religion, or a belief of the person that human life is inviolable.

A former member of this chamber known to many of us, Honourable Senator Stanley Haidasz, worked for some time to obtain parliamentary approval of his effort to enhance and protect human rights. The cause has the support of people of various parties in Canada and is of concern to civil liberties organizations. Certainly civil liberties people in British Columbia have indicated their interest in this apparent shortcoming in human rights.

Before he left the Senate, the Honourable Senator Haidasz expressed the view that he hoped his work would continue here. Senator Haidasz first developed the essentials of this bill before he retired two years ago. Senators of differing persuasions approved the principle of the bill at that time. For various reasons, though, including the retirement of its sponsor, the bill dropped from sight.

Senator Haidasz mentioned, at the bill's second reading, that he had received over the years several letters and other correspondence, including more than 8,000 petitions from health care practitioners. This correspondence included messages from physicians expressing distress where an ethical decision concerning the risk to human life was hampered by the fear of reprisals. Where efforts were being made to save lives, to treat illness and to ameliorate but not necessarily eliminate suffering, there were fears of reprisals for striving to avoid exposing life to lethal risks.

Many of the same doctors and nurses acknowledge that proving the intent to suppress their convictions about human life would be impossible. Nevertheless, all of the petitioners expressed a view that they would be relieved to have federal legislation to meet their concerns.

A federal remedy has been sought over these many years because the issue of freedom of conscience and religious expression lies four-square within the ambit of our criminal law power in Parliament.

The late Walter Tarnopolsky of venerable memory, a renowned Ontario Court of Appeal justice and Osgoode Hall professor of law, produced 20 years ago a seminal, unpublished paper entitled "Freedom of Religion in Canada: The Legal and Constitutional Basis." That paper and the Canadian Bill of Rights have been cited regularly by legal authorities and others studying the broader issues of religious and conscience rights, even after enactment of the Canadian Charter of Rights and Freedoms, which came some years after the Bill of Rights.

Ably demonstrated by Justice Tarnopolsky in this special study, the simple bottom line is the power to protect these inherent and now Charter rights lies nowhere else. It does not lie in the provinces, except as a power to enforce.

One can only wonder why it has taken so long to bring this important issue of human rights to public attention. Legislated protection for health-care workers already exists in many jurisdictions, including 45 out of 50 states in the United States. Incredibly, in Canada we do not yet have any legislative protections in either provincial or federal law. To many Canadians, this is a tragic situation because the need is great. There have been clear violations of the human and labour rights of nurses working in Canada. Many have been denied employment or denied a promotion or have been dismissed for refusing to participate, for example, in abortion procedures. Other nurses, fearing a loss of job and possibly career, have violated their consciences in order to keep their jobs.

This is causing a great deal of psychological pain since these nurses entered their professions with a desire to heal but now find that they are coerced into inflicting what their hearts tell them is the ultimate form of harm. Many nurses have agonized over this dilemma. Indeed, two years ago, my wife and I were canvassing in one of the lower mainland constituencies of British Columbia. We were met at the door by a woman who was clearly distraught. She said, "I have been a nurse for 16 years at our local hospital and I can no longer in conscience participate in certain procedures which I believe are wrong and I have quit my job. I am unemployed."

The situation facing many nurses is described well by the organization called Nurses for Life. Nurses for Life believes that at least five considerations need to be kept in mind when considering the plight in which a number of nurses find themselves.

First, it is sometimes claimed that abortion is strictly a private matter between a pregnant woman and her physician, but Nurses for Life state that they know that this is never the case. Doctors do not function without nurses who are deeply involved participants at every stage of the abortion procedure. The problem is that while doctors are free to perform or not to perform abortions, and while pregnant women are free to undergo or not to undergo abortions, nurses have not been given the same freedom to choose whether or not they want to participate in this procedure. They claim that they have been taken for granted.

Second, unlike doctors, nurses are employees of hospitals. Their employment and income are, therefore, dependent on their remaining in the good graces of hospital administrators in a way that the doctors' income and employment is not.

• (1700)

Third, even in the rare instances where nurses' employers accommodate their conscience rights, "respect-for-life" nurses can be singled out as nonconformists who are not "team players." This greatly inhibits their chances of promotion.

Fourth, like doctors, nurses maintain that they often specialize in areas such as obstetrics and gynecology in which they acquire a special knowledge, experience, skills and interest. Even if the hospital offers to "accommodate" conscientious objectors, it often does so by transferring these nurses out of the department in which they have their specialty, despite the fact that abortion procedures constitute only a small part of the department's practice. Nurses are coerced into either assisting in abortions or abandoning their specialization, which they have worked hard at and which has become a part of their professional identify. By contrast, no one has ever suggested that Canadian doctors who specialize in obstetrics and gynecology would leave their specialty because they are unwilling to perform abortions.

The fifth point on the nurses' lists is this: It is becoming increasingly difficult for certain nurses to choose their areas of practice in which they can avoid the problem of assisting in abortions, since the procedure is often performed in wards other than obstetrics and gynecology. This is not a pro-life or pro-choice debate at all. This is a matter of human rights. I am not arguing the other case.

There is frustration by hundreds of nurses across the country who have been unjustly coerced in one way or another. Most of their stories have never gained public attention; some have, of course.

One notable example involves the mistreatment of nurses alleged at the Markham-Stouffville Hospital in the Toronto area in Ontario. Eight nurses were dismissed from the hospital in 1994 because they would not assist in abortions. They took their complaint to the Ontario Human Rights Commission. They waited five long years for a hearing, during which one of the nurses died. At the last moment, right before the hearing was scheduled for this year, the hospital agreed to settle. In addition to providing financial compensation, the hospital agreed to draft a strong policy statement protecting the conscience and labour rights of nurses still at the hospital.

Honourable senators, I maintain that this bill offers a suitable remedy to the many who are afflicted with a dilemma that ought not to impede them in their response to healing and caregiving as something that they see even, in the case of some, as a spiritual vocation.

The situation that many nurses face in the workplace is clearly unacceptable. It violates their human rights. There is evidence that at every turn nurses are entitled to legal protection.

First, section 2(*a*) of the Charter of Rights and Freedoms guarantees freedom of conscience and religion.

Second, these freedoms are also listed in the Canadian Human Rights Act and in provincial human rights legislation.

Third, case law in both Charter and human rights cases overwhelmingly supports the protection of freedom of conscience and religion in Canada. The nature of the various cases and rulings indicates that if every unlawfully dismissed nurse were to lodge a formal complaint against her former employer, the employers would probably lose.

Fourth, the Code of Ethics of the Canadian Medical Association clearly acknowledges the principle that health care workers possess conscience rights. It states that physicians are to "inform the patient when their personal morality would influence the recommendation of practice of any medical procedure that patient needs or wants." The wording clearly implies that while doctors must inform patients of their personal convictions, they in no way have to abandon those convictions. In the matter of abortions, for example, doctors are required neither to perform abortions nor even to refer clients to those who perform the procedure.

Fifth, some medical facilities have themselves acknowledged that nurses possess conscience rights. I have already mentioned the Markham-Stouffville Hospital, which is the most recent example of a hospital granting and implementing a policy statement to protect nurses.

The first key statement in its policy states that all nurses with a religious objection to perform or participate in first trimester termination of pregnancy will be exempt. Subsequent clauses repeat this affirmation for second and third trimester abortions. The only exception made to this policy is when a pregnancy actually puts the mother's life in danger.

Yet, honourable senators, even with this kind of clarity from the Charter, Human Rights Acts, the Canadian Medical Association, and the policy statement of certain hospitals, nurses' rights are still being violated. Why is this? Why have these laws and policy statements not been sufficient?

In a recent speech delivered in the other place on the subject of Bill C-207, one of the MPs, Mr. Maurice Vellacott, made an interesting and excellent contribution to the dialogue. He said:

> Let's start with the Charter. The Charter cannot protect nurses from coercion in the workplace because it was simply not designed for this purpose. The Charter can only be used to attack laws that are inconsistent with Charter rights. Since the current violation of nurses' conscience rights is not being driven by any special federal or provincial laws, there is nothing to attack by means of the Charter. The Charter is, therefore, unable to help nurses in their present plight.
>
> If the Charter is of little help, what about Human Rights Acts and Commissions? Unfortunately they are also insufficient. Human Rights Commissions attempt to remedy injustice after the fact — usually years after the fact. They are ineffective at preventing people from losing their jobs. In addition, they only address abuses that are brought forward by people with above average initiative who are familiar with their rights and are persistent. As a result, many injustices go completely unnoticed by the commission. On the whole, Human Rights Commissions, because they are slow and reactive, are unable to provide nurses with immediate proactive protection which they need to stay employed.
>
> Lastly, the nurses asked us to consider the effectiveness of hospital policy statements. The problem here is that so few hospitals have such statements. I have mentioned the success story of the Markham-Stouffville Hospital and we need to keep in mind that the hospital adopted this policy only when it was on the brink of a hearing before the Ontario Human Rights Commission. It can be said that the right thing was done but it was done very reluctantly. Without pressure perhaps it would never have acted. And that is why separate and explicit conscientious legislation for health care workers is needed.

The measure proposed here may be limited in scope, but it would at least provide relief to nurses from the immediate threat they are facing today.

Canada, under which freedom of conscience and religion would be protected, has the criminal law power. The established doctrine that religion and conscience finds their first head of protection under federal law remains settled.

Freedom of speech has long been recognized in common law and was often related to the freedom of religious expression. That is but one historic reason that federal jurisdiction is the first ambit for defence of inherent rights that are so fundamental in a free and just, democratic society.

We have already a Criminal Code that declares it an offence to obstruct a religious meeting. We also have a Human Rights Act that forbids discrimination on the basis of religion or creed. Under the Canadian Charter of Rights and Freedoms, both provisions are subject to a consideration of "reasonable limits" where necessary to protect "public safety, order, health, or morals, or the fundamental rights and freedoms of others." These are words from an international document.

"Reasonable limits" are what constitutional experts mean when they say the right to religious freedom is not an absolute, but the expression of one's conscientious belief that a patient's life is sacred is hardly something that threatens public order, health or morals. At any rate, when the freedom to live with this conviction is threatened by coercion, a statute should be there to offer protection in accordance with fundamental justice.

A number of surveys of Canadian jurisprudence respecting the freedom of conscience and religion refers to Article 18 of the International Covenant on Civil and Political Rights, which Canada ratified in 1976. The first three paragraphs of Article 18 are worthy of citation:

> 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
>
> 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
>
> 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Honourable senators, it is for the reasons of fundamental justice described in this last paragraph of Article 18 that an emergency room paramedic can be compelled to assist in a blood transfusion, even if he has become a Jehovah's Witness. Such a limit of his religious freedom in the circumstances is deemed a reasonable limit. However, a conscious and competent Jehovah's Witness as a patient cannot be compelled to submit to a blood transfusion. It is the refusal to take life-risking actions, not life-saving ones, that is backed by the power of the proposed bill.

• (1710)

Freedom of conscience and freedom of expression lie at the very root of Canadian Confederation. The cultural freedom of disparate religious groups has been a touchstone of Canada, in writing, in civil code and in what can be called innate or inherent rights, from the beginning of Confederation and before — indeed, since Cabot's landing and the founding of different confessional communities in Newfoundland.

In the context of the reality that medicine, both science and practice, has loosed its moorings from the stays of respect for human life, there is need to strengthen the fundamental regard we have of conscience. We must put in place measures to meet the serious abuses of personal freedoms and ultimately of patients' lives. Down the road, we need legislation that is more comprehensive than this bill or the bill that was introduced in the other place.

Honourable senators, I invite your support for Bill S-11. It will not only be of help to thousands of those in the nursing profession, but it will serve to advance the cause of human rights, which is of such concern to all members of this chamber. I hope that honourable senators will support reference of this bill to the appropriate parliamentary committee, where the views of both proponents and opponents can be heard and where we can determine if there is a violation of human rights in the situation that exists at the present time.

On motion of Senator Cools, debate adjourned.

CRIMINAL CODE
CORRECTIONS AND CONDITIONAL RELEASE ACT

BILL TO AMEND—SECOND READING—ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Watt, for the second reading of Bill C-247, to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences).—(*Honourable Senator Taylor*).

Hon. Anne C. Cools: Honourable senators, last Tuesday, during his remarks —

The Hon. the Speaker *pro tempore***:** Honourable senators, I wish to inform the Senate that if Senator Cools speaks —

Senator Cools: No, honourable senators. It is a point of order. I am asking the Senate for leave to defer.

The Hon. the Speaker *pro tempore***:** What are you asking from the Senate, Honourable Senator Cools?

Senator Cools: I was about to say, honourable senators, that I wanted to rise on a point of order in respect of remarks that Senator John Bryden had made, but the honourable senator is not here today. Therefore, I should like to indicate to the Senate that it is my intention to raise a point of order when he is present.

The Hon. the Speaker *pro tempore***:** Therefore, this order will remain standing in the name of Honourable Senator Taylor.

Order stands.

A BILL TO CHANGE THE NAMES OF CERTAIN ELECTORAL DISTRICTS

SECOND READING—ORDER STANDS

On the Order:

Second reading of Bill C-473, to change the names of certain electoral districts.—(*Honourable Senator Carstairs*).

Hon. Sharon Carstairs: Honourable senators, this item is standing in my name because it was introduced when I was acting deputy leader for the day. The sponsor of the bill is actually Senator Rompkey. Therefore, I should like the item to stand in his name.

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

Hon. Senators: Agreed.

Order stands.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

EIGHTH REPORT OF COMMITTEE ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Rompkey, P.C., seconded by the Honourable Senator Robichaud, P.C. (*Saint-Louis-de-Kent*), for the adoption of the eighth report of the Standing Committee on Internal Economy, Budgets and Administration (Accessibility for Persons with Disabilities) presented in the Senate on April 10, 2000.—(*Honourable Senator Carstairs*).

Hon. Sharon Carstairs: Honourable senators, it is with pleasure that I rise today to speak to the eighth report of the Standing Committee on Internal Committee, Budgets and Administration. This specific report deals with accessibility issues within the Senate of Canada.

Honourable senators, the credit for this initiative goes to Senator Brenda Robertson. I was delighted to work with her and with members of the Senate staff, but no one should forget that it was done under the leadership of Senator Robertson.

I know that many of you have watched with interest and some curiosity the new service provided to our colleague Senator Gauthier. As you are aware, he has a hearing disability. Despite our attempts to give him enhanced and advanced audio, we failed. The new service provides that one of our Hansard reporters produces a running written presentation to Senator Gauthier, which he can read, thereby making all debates fully accessible to him in this chamber, in caucus and in committee, provided that there is staff available.

This, honourable senators, is the nub of the entire issue surrounding accessibility. We can develop policies and we can provide new initiatives, but if we are not fully committed — and this almost always means a commitment of dollars — policies will remain pious phrases. It is my hope that we will go well beyond pious phrases with respect to accessibility in this institution.

Honourable senators, we have made a very good first start this year, but it is just the first step in the process. I would remind honourable senators that we have many miles to go before any of us can sleep.

Hon. Senators: Hear, hear!

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

EUROPEAN MONETARY UNION

REPORT OF FOREIGN AFFAIRS COMMITTEE ON STUDY

On the Order:

Resuming debate on the consideration of the fourth report of the Standing Senate Committee on Foreign Affairs entitled: "Europe Revisited: Consequences of Increased European Integration For Canada", tabled in the Senate on November 17, 1999.—(*Honourable Senator Grafstein*).

Hon. Roch Bolduc: Honourable senators, the Foreign Affairs Committee has in recent years produced two reports on the European Union, because this association of states is important both in itself and for Canada.

The European Union represents one quarter of the world's production, just like the United States, about $8 trillion each. For purposes of comparison, it should be noted that Canada accounts for about 2.5 per cent of world production.

All honourable senators here know that 87 per cent of our foreign trade is with the United States. However, it is worth recalling that we do $65 billion in business with the European Union every year in goods and services, and that foreign investment on either side of the Atlantic — that is, in Canada and in Western Europe — is on the order of $45 billion, as Senator Stollery, chair of the committee, reminded us recently. Just yesterday, for example, International Trade Minister Pierre Pettigrew announced that Bombardier is selling Spain 40 aircraft, including 29 Dash 8s and 11 medium-range jets, a deal worth $1.2 billion.

The European Union is thus an important political region for our economic activity, to say nothing of the special cultural links that we have had for centuries with England and France and, more recently, with Germany and Italy, among others.

However, the growth of our trade with the European Union has been slowing down relative to the rest of our foreign trade. We are, in fact, in something of a corner, caught on the one side by the growing importance of our dealings with the Americans and on the other by the difficulties we are encountering in increasing our trade with Western Europe. How can we expand our manoeuvring room? That was the type of concern we dealt with in our two studies and reports on the European Union.

Before answering that and other related questions, I should like to discuss briefly how the situation in Europe has changed from a decade ago.

First, the French leadership in Europe that marked the post-war period and reconstruction began some years ago to be replaced by a German ascendancy — low key but real. Not everyone would agree with me on this, but it seems to me to be inevitable.

Second, the Kosovo episode decisively changed the image that Western Europe had of itself. The European defence initiative, although it may be an objective that will take a decade to achieve, now seems to me both feasible and healthy, as long as it is exercised within the framework of NATO, which remains and must remain the western security umbrella.

The Euro, although its value has dropped in relation to the American dollar over the past year, which was to be expected, has been launched and is primarily benefitting European exporters.

Lastly, the political leadership of the union is shifting from the commission in Brussels to the normal and more legitimate hands of the member governments. Europe is thus heading more in the direction of a confederation than of a federation, which can only improve the democratic decision-making process. It remains to be seen whether consensus or some kind of majority rule will be confirmed in order to speed up the pace of decision making in a rapidly evolving international context.

• (1720)

The political culture of continental Europe, represented by the joint accumulation of 80,000 pages of regulations, continues to make the British uncomfortable. They have rejected the monetary union which will shortly include new Scandinavian partners. All this means that the European political landscape is changing noticeably every year.

The British — and an analogy could be drawn here with the Quebecers in our federation — have doubts about the more interventionist approach of the continental Europeans.

[Senator Bolduc]

[*Translation*]

In fact, it is no secret to anyone that the English have felt uncomfortable — since Mrs. Thatcher and even with Mr. Blair more centrist than many Conservatives — with certain European phenomena foreign to their viewpoints, for example, a fairly inflexible labour market, a central bank that answers to no one, Rhenish capitalism, which, although still evolving, remains very different from the more decentralized Anglo-American capitalism, a lag in high-tech spending and investments, a type of governance less democratic than the traditional one at Westminster and rules of ethics in the daily workings of the union whose application has surprised the islanders in recent years.

Even yesterday, we saw an example of the quasi-judicial use of power by a court on the competition that was impeding certain transactions between American and European companies. We have seen this in Canada. Canadian companies have been in the same situation.

These are the broad lines of the look of the European landscape that struck me during these studies by our committee. What does all this mean for Canada? First, I think we must keep a watchful eye on this regional economic and political integration process, for reasons given earlier. The situation is changing, and we must be aware of it.

In trade terms, our strategy must, in my opinion, be one of flexibility. The Europeans are subsidizing their farmers to the tune of $45 billion U.S. annually. That is a huge amount, and hurts us. What is more, in the process of expanding the union, the countries awaiting membership are farming countries such as Poland, whose conditions of entry currently under negotiation could perhaps harm us.

This is why we must target our action on the trade front. That means elimination of technical barriers such as the certification of technical qualifications, rules of competition and so on, agreements focusing specifically on new information technologies, for example, or e-commerce, progress in our trade agreements with other countries that are not members of the union, such as Norway and Switzerland, promotion of bilateral relations with Ireland — which are already well underway — but with England, Holland and Germany too, not to mention France and Italy.

We have common cultural interests with France, among other countries, and we must develop them. In the case of England, it is more complex because of the natural intertwining with the United States.

We must discuss with Western Europeans, our cultural cousins, general common concerns for world peace, for example, energy issues, global warming, the international financial architecture that is being redefined, and the transatlantic link that is so critical from a geopolitical point of view. I will get back to this when we discuss the most recent report of the Standing Senate Committee on Foreign Affairs on NATO.

This year, we must also try to deal with the problems that surfaced at the World Trade Organization during the talks on agricultural protectionism. We must also use the OECD to tell Europeans about the benefits of regulatory multilateralism in the area of trade, and the joint benefits of having clear rules to protect foreign investments. This is very important for us, because, faced with European trade barriers, our industries have decided to bypass these barriers by investing in Europe and settling there.

Honourable senators, these are my thoughts as we table our report.

The Hon. the Speaker *pro tempore***:** Honourable senators, if no other senator wishes to speak, this item is considered debated.

[*English*]

NATIONAL DEFENCE

NEED TO JOIN WITH UNITED STATES IN MISSILE DEFENCE PROGRAM—INQUIRY—DEBATE ADJOURNED

Hon. J. Michael Forrestall rose pursuant to notice of April 5, 2000:

> That he will call the attention of the Senate to the need for Canada to join the United States in National Missile Defence.

He said: Honourable senators, I wish to draw to your attention today the issue of the United States National Missile Defense Program, or NMD. As senators are aware, Senator Roche, a former ambassador for disarmament, raised this issue earlier this year. It is to the Senate's credit that we have men and women like him here in the Senate initiating and leading the debate on arms control issues with the knowledge and passion that he brings to this important topic. However, after some considerable thought and many years of being very closely involved, I must disagree with his opposition to National Missile Defence.

When Senator Roche addressed us, he said:

> The government should couple its resistance to missile defence with a vigorous implementation of the 15 recommendations in the report of the Standing Committee on Foreign Affairs and International Trade entitled "Canada and the Nuclear Challenge: Reducing the Political Value of Nuclear Weapons for the Twenty-First Century."

As a point of fact, it is actually a report of the other place and not a Senate report.

Having said that, I fully agree that we should support those recommendations, and I ask honourable senators: What could reduce more the political value of nuclear weapons, in particular a large arsenal of offensive retaliatory nuclear weapons, than an effective non-nuclear national missile defensive system? That is the thrust of my argument, which concludes that it is very much in Canada's national interest to support the proposed defensive system.

What is National Missile Defence? Why is it important? Does it violate the ABM Treaty? If so, does this destabilize deterrence? What are Canada's interests in National Missile Defence? What should Canada do to try to address them?

First, National Missile Defence is not "star wars" and not SDI, a grandiose space-based missile defence system, infamous from the Ronald Reagan years. It died a timely death due to cost and lack of technical means to make the program work.

National Missile Defence is based on at least two defence systems — Theatre High-Altitude Area Defence, or THAAD, and the Navy Theatre Wide program, or NTW. The plan is to have one system, or both, in place by the year 2007, if the President of the United States makes the decision to move forward this summer.

Theatre High Altitude Area Defence would see 20 exo-atmospheric vehicles or unarmed interceptor missiles deployed in 2007 and approximately 80 more over the next few years. These defensive missiles disable incoming, threatening ballistic missiles through the effects of impact. They are not armed. The Theatre High Altitude Area Defence system would eventually see upward of 100 missiles deployed in Alaska. If it moves to a second subsequent stage, then another 100 would be deployed in North Dakota. The sole purpose of THAAD would be to attack and destroy ballistic missiles before they could reach the United States.

The Navy Theatre Wide program was developed for two reasons: One, to protect forward deployed United States forces and their allies from such things as Iraqi or North Korean Scud missile attacks; and two, to provide early tracking and interception of missiles before they are engaged by THAAD. Navy Theatre Wide is based upon the air defence systems of the Aegis destroyers, cruisers of the United States navy, and the Standard Missile-3 that is being developed in cooperation with Japan. In June and August 1999, THAAD had two successful intercepts during testing and a subsequent failure. Navy Theatre Wide has had a number of successes over the past year. However, it is important to note that both are theatre level systems, not national strategic systems. It would take both together, and others, obviously, to create a national missile defence system.

• (1730)

The reason that billions of dollars are being spent on these programs may not be obvious to Canadians, but it is to other countries in Asia and in Europe — people who fear missile attack by the so-called rogue states. These rogue states of Iran, Iraq, and North Korea care so little for their own population that one can reasonably assume that they would care even less for their neighbours. North Korea, Iraq and Iran have developed medium- and longer-range ballistic missiles that threaten their neighbours and that someday soon may threaten the United States and Canada. North Korea's Taepo Dong-2 immediately comes to mind as a potential threat some time in the very near strategic future — probably by the year 2005.

The proliferation of missiles, honourable senators, both ballistic and cruise, is occurring at an alarming rate. These very countries I have mentioned are all believed to have developed or are near to developing chemical, biological and nuclear weapons. There is a threat. Make no mistake about it. Thirty states now have ballistic missiles, and 70 have cruise missiles. Critics charge that National Missile Defence is not geared to defend the United States from a terrorist group with a crude nuclear weapon. That is quite true, but the real threat of a major catastrophe remains rogue missile launch of a nuclear weapon. Each threat calls for different counter-measures. To deal with suitcase bombs, for example, you need reliable intelligence. To deal with North Korean missiles, you need a limited non-nuclear missile-based defence system. The critics should stop mixing apples and oranges.

Is National Missile Defence a violation of the Anti-Ballistic Missile Treaty of 1972? In my judgment, there is no question that Navy Theatre Wide as currently armed violates the 1972 ABM Treaty, and 1974, and particularly the 1997 amendments, because the Navy Theatre Wide employs an interceptor missile that exceeds the treaty speed cap of three kilometres per second. The 1997 amendment allows Theatre Missile Defence but caps the interceptor speed at three kilometres per second. You will notice immediately that this is a technical violation, not a legal violation, of the treaty. That is so because, as I have suggested, this is a theatre level matter, not a strategic level, so it is not a legal violation of the treaty. As well, it is important to point out that the ABM Treaty allowed for limited ABM defences in a limited region, for example, around the nation's capital or a missile field — not both. Russia has had its ABM system around Moscow for years. The Americans used to have a defence system in North Dakota and abandoned it. Now North Dakota is the site of a proposed second-stage system, which could be put in place with no violation of the ABM Treaty whatsoever. The ABM Treaty allows theatre level systems but not strategic systems.

Honourable senators, I do not need to remind you that that which is not written in a treaty is outside of a treaty. There is no such thing at present in international law as the spirit of the treaty — or as we like to say, "the spirit of the legislation." This is another world. I think the drafters could have and perhaps should have considered the fact that theatre systems could be plugged into a central strategic system, resulting in a legal violation of the ABM treaty. However, that did not happen. What the ABM Treaty may not allow is the national coverage that Navy Theatre Wide would provide in addition to THAAD. Indeed, I believe that THAAD is not a treaty concern, as it does not give national coverage of all 50 states and is only situated on the missile tracks for missiles fired from Asia — in other words, North Korea, China and Russia. Thus, ABM Treaty violations and discussions will hinge on the Navy Theatre Wide position.

Honourable senators, the Russians and Chinese are clearly concerned with the United States' plans to create a National Missile Defence system and claim that it destabilizes deterrence. Does NMD do destabilize deterrence? Deterrence is based on the premise that, in the event of an attack by an aggressor, they in turn would face counterattack so costly as to make the initiation of any missile exchange completely irrational and strategically useless. Deterrence is based upon a premise of rationality. The current NMD system now proposed by the United States is not geared to face a salvo of 877 land-based Russian inter-continental ballistic missiles. It never was intended for that purpose. If Russia's sizeable and extremely capable arsenal was launched at the United States, it would easily overwhelm the 20 to 100 American defending missiles. Additionally, Russia is placing increasing reliance on its Submarine Launched Ballistic Missile force. These missiles would easily defeat an ABM system because of the short warning time between launch and impact, leaving a defender little time to react until it is too late.

It is also important to point out that these missiles are existing systems that can defeat National Missile Defence. Therefore, there is little danger of the costly resort to an arms race that Russia, because of its economic position, is not prepared to win, let alone fight. Thus, National Missile Defence is not even in this deterrence equation. NMD does not threaten American-Russian deterrence and probably will become a moot point or, at best, a bargaining chip down the road. In fact, it may be the leverage needed to get the Russian Duma to ratify START II and possibly push the Americans to looking at START III. It is in President Putin's interest to do so, I would suggest, before a Republican president takes office in that country.

• (1740)

At present, honourable senators, China only possesses a few inter-continental ballistic missiles that could be intercepted by the American system in a nuclear exchange. This situation changes every day. Soon, China will deploy a multiple-warhead-capable, road-mobile, inter-continental ballistic missile in the form of the DF-31 and the DF-41 in sufficient numbers to easily overwhelm THAAD or Navy Wide. Additionally, new submarines are in building that will carry the JL-2 Submarine Launched Ballistic Missile, again a system that could easily defeat NMD. This will happen very quickly over the next few years and likely prior to America's scheduled deployment of National Missile Defence in 2007. As no National Missile Defence System is deployed to date, and as it is likely that China's nuclear arsenal will go through modernization prior to THAAD or Navy Theatre Wide deployment, it is unlikely that Chinese-American deterrence will be threatened. Again, these systems, the DF-31, the DF-41 and the JL-2, will easily be deployed in numbers sufficient to overwhelm National Missile Defence, and there is no reason to move to an arms race. Hence, suggestions that National Missile Defence will foster an arms race is plain nonsense. The weapons are in either the deployment phase or in the building phase now.

Critics of National Missile Defence charge that it will lead to a proliferation of missiles and nuclear weapons. I contend that it is important to note that Russia and China have been among the worst proliferators of missile technology in the world. Their Missile Technology Control Regime and the Non-Proliferation Treaty are increasingly being violated without regard as to whether the United States goes ahead with the National Missile Defence system or not. Russia is helping Iran with its missile program, and China is believed to be behind Pakistan's program. Indeed, if China, Russia and North Korea stopped the proliferation of missile systems, we would likely not be faced with this very serious question.

The Hon. the Speaker: Honourable Senator Forrestall, I regret to have to interrupt you, but your 15-minute speaking period has expired.

Senator Forrestall: I should like a few more minutes.

Hon. Dan Hays (Deputy Leader of the Government): I am curious. How long does the Honourable Senator Forrestall think he will be?

Senator Forrestall: Not more than seven or eight minutes, and certainly not an hour.

The Hon. the Speaker: Is leave granted, honourable senators, to allow Senator Forrestall to continue?

Hon. Senators: Agreed.

Senator Forrestall: China's buildup of theatre-level nuclear and conventional missile forces may, in the end, force Japan and Taiwan to arm with nuclear weapons and missiles. Japan could do so very rapidly. Chinese rhetoric threatening its neighbours with missile attack, as it did recently with the United States, is far from helpful. Iran, Iraq, North Korea, Israel, India and Pakistan are all likely in violation of the 1970 Non-Proliferation Treaty because they believe that possessing nuclear weapons enhances their security. In my mind, the proliferators are bringing us to the edge and it is they who are destabilizing deterrence at the regional and theatre level. The Non-Proliferation Treaty is, in reality, dead. Perhaps if China, Russia and North Korea behaved better, the United States would be more inclined to listen to their concerns about National Missile Defence.

In summary, honourable senators, China-U.S. and Russia-U.S. deterrence is not destabilized in the slightest by National Missile Defence. Proliferation of missile technology and nuclear weapons continues in the absence of the system.

The question is: What is in it for Canada and should we join the Americans? First, there are negative consequences to not participating in National Missile Defence. It is my opinion that with people the likes of Kim Jong Il of North Korea in this world — by all accounts a paranoid psychotic in control of ballistic missiles and likely five nuclear weapons — a limited ballistic missile defence system is a rational approach to dealing with the threat posed by such "rogue states." When North Korea launched a Taepo Dong in August 1998, even the Russians — their supposed friends — put missile-carrying destroyers to sea. North Korea's closest ally, China, expressed concern and urged good behaviour, and Japan talked of pre-emptive attack.

Let us not be deluded, honourable senators. I agree that a missile attack on Montreal is highly unlikely — but it is not impossible. What is likely, though, is that the Taepo Dong is lacking a reasonable guidance system. If targeted on Los Angeles, it could come down almost anywhere on the West Coast, including Vancouver, by plain and simple accident. It is not that we would intentionally be targeted — and I called him psychotic — but that we would be attacked by faulty equipment merely due to geographic proximity.

Further, if we do not participate, where do honourable senators think these missiles being shot down will land? Wyoming or Alberta? We are either part of National Missile Defence or we are outside.

Historically, Canadian governments have known that Americans will violate our sovereignty in the air and sea to protect theirs. Mackenzie King knew this when he opted to maintain a small navy for coastal patrol. King made sure that it was just large enough to keep the Americans happy. Former prime minister Trudeau realized this in the strategic anti-submarine warfare debate. NORAD, in a simplified way, was developed to ensure that if our sovereignty was to be violated, at least we were in on the planning details. NORAD is either in National Missile Defence or out. What do honourable friends think will happen to NORAD if we do not play a part in this program? We already do not carry our fair share of the defence burden. Ask New Zealand what it is like to sit blind without American assistance. They opted out of the joint defence agreement between Australia, New Zealand, the U.S., the U.K. and Canada. About 18 months ago, after sitting on the outside for a few years, they found their way back into the arrangement. Why? Because going it alone means just that: You go it alone. It is not a lot of fun.

In contrast, there are very positive consequences to being involved in National Missile Defence. Participating in National Missile Defence gives us a voice at the table and allows us to sit in on the planning. The Americans will deploy whether we like it or not. Canadian involvement gives us a chance at diplomacy. Otherwise, we are telling a sovereign state how to make its defences. Canadians know how we feel about outsiders telling us how to spend our defence dollars. We remember Minister Axworthy's outrage over NATO Secretary General Robertson's visit to Canada and the call for more defence spending.

Honourable senators, I ask you to think about the most important reason to become involved. Consider the productive diplomatic leverage we could exert on our closest ally and major trading partner if we said that we fully support their non-nuclear defence effort but that we are prepared to do so only if it is in conjunction with a demonstrated commitment on their part to reduce reliance on offensive nuclear weapons. Our enthusiastic participation and global diplomatic efforts in support of their initiative will depend on meaningful movement on their part on such matters as initiation and ratification of START III, with a significant reduction of defensive nuclear weapons, and ratification of the Comprehensive Test Ban Treaty. Furthermore, our participation would include encouragement for other initiatives, such as support — and I say this advisedly — in rebuilding Russia's early warning satellite system, and consideration of basing similar National Missile Defence systems near other threatened nations, such as Russia and China, to enhance their security and remove the cause of nuclear defence.

Thus, Canada would certainly not be seen by our citizens as the lackey of the Americans but, rather, as a "tough love" partner, if you will. The Americans are prepared to develop the NMD without the support of Canada. However, from their recent pronouncements, they would very much like to have us on board. We should do so, but we should use the opportunity to present to them constructive conditions which most Americans would support and which I further suggest most U.S. government officials would probably welcome in order to get themselves off that "top dead centre" on this very important issue. This requires diplomacy — real diplomacy and not sticking the Canadian finger in the American eye.

In conclusion, honourable senators, we in the West, very much including Canada, have lived under the threatening shadow of two superpowers heavily armed with deadly, offensive nuclear weapons aimed at each other. Our security depended on the threat of massive retaliation that would escalate a nuclear exchange into a global disaster. The concept was suicidal, and we all knew it. In 1983, even the Conference of American Catholic Bishops had difficulty dealing with the nuclear paradox that finally emerged. They finally concluded that while it may be rational to deploy retaliatory nuclear weapons and even moral to threaten to use them if that would prevent aggression, it would be both irrational and immoral to actually use them. Not only because I am a Catholic, but as a responsible citizen, I must agree with the bishops' conclusion in their 1983 pastoral letter on the subject.

• (1750)

How do we break the deadlock? Let us make no mistake. The threat was and continues to be offensive nuclear weapons. Therefore, the challenge to restoring sanity and a modicum of safety is to do everything possible to shed dependence on these offensive nuclear weapons and find other means to ensure our security. That is exactly what the non-nuclear National Missile Defence system is all about. It is clearly in Canada's national interest to support the American non-nuclear defence initiative, and to help them escape their dependence on offensive nuclear weapons.

Thank you for your indulgence, honourable senators.

Hon. Nicholas W. Taylor: Honourable senators, I have a couple of short questions of clarification. I am not sure I understand the difference between a "theatre" missile and a "national" missile. Senator Forrestall uses the two words. I think the honourable senator said that this particular missile is a national one and not a theatre one, or did I get it backwards?

Senator Forrestall: What it proposes, of course, is that there are two systems. One is a high-altitude system; the other is a marine-based system. We are talking about the difference between a strategic system and a theatre system. A theatre system is in this room; strategic is Parliament Hill, or all of the country in other words. That is the context. When you look at the treaties that were involved, and what we are attempting to foster as part of the Canadian culture and phenomenon, we are looking at non-nuclear defence systems.

This is a projectile that travels at such an extraordinary speed that it does not need dynamite. It sure does not need nuclear detonation to render the system ineffective. That basically is the difference.

On motion of Senator Taylor, debate adjourned.

[*Translation*]

ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

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 Tuesday, May 2, 2000, at 2:00 p.m.

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

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned during pleasure.

ROYAL ASSENT

Her Excellency the Governor General of Canada, having come and being seated at the foot of the Throne, and the House of Commons having been summoned, and being come with their Deputy Speaker, Her Excellency the Governor General was pleased to give the Royal Assent to the following bills:

An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act (*Bill C-6, Chapter 5, 2000*)

An Act to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts (*Bill C-13, Chapter 6, 2000*)

An Act to give effect to the Nisga'a Final Agreement (*Bill C-9, Chapter 7, 2000*)

The House of Commons withdrew.

Her Excellency the Governor General was pleased to retire.

The sitting of the Senate was resumed.

[*English*]

• (1810)

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, before I ask for the adjournment motion, I wish to call your attention to visitors in our gallery from the Nisga'a Council, led by their elders.

We also have in our gallery Dr. Henry Friesen, President of the Medical Research Council of Canada, who was interested in Bill C-13, which received Royal Assent today.

On behalf of all honourable senators, I bid you all welcome to the Senate of Canada.

Hon. Senators: Hear, hear!

The Senate adjourned until Tuesday, May 2, 2000, at 2 p.m.

THE SENATE OF CANADA
PROGRESS OF LEGISLATION
(2nd Session, 36th Parliament)
Thursday, April 13, 2000

GOVERNMENT BILLS
(SENATE)

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-3	An Act 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	99/11/02	99/11/24	Banking, Trade and Commerce Foreign Affairs	99/12/07 99/12/09	0 0	99/12/16		
S-10	An Act to amend the National Defence Act, the DNA Identification Act and the Criminal Code	99/11/04	99/11/18	Legal and Constitutional Affairs	99/12/16	2	00/02/09		
S-17	An Act respecting marine liability, and to validate certain by-laws and regulations	00/03/02	00/04/04	Transport and Communications					
S-18	An Act to amend the National Defence Act (non-deployment of persons under the age of eighteen years to theatres of hostilities)	00/03/21	00/04/04	Foreign Affairs					
S-19	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	00/03/21	00/04/06	Banking, Trade and Commerce					

GOVERNMENT BILLS
(HOUSE OF COMMONS)

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-2	An Act respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts	00/02/29	00/03/28	Legal and Constitutional Affairs	00/04/13	0			
C-4	An Act 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	99/11/23	99/12/01	Foreign Affairs	99/12/09	0	99/12/14	99/12/16	35/99

C-6	An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act	99/11/02	99/12/06	Subject matter 99/11/24 Social Affairs, Science and Technology	99/12/06 99/12/07	2	99/12/09	00/04/13	5/00
C-7	An Act to amend the Criminal Records Act and to amend another Act in consequence	99/11/02	99/11/17	Legal and Constitutional Affairs	99/11/30	4	99/12/08	00/03/30	1/00
C-9	An Act to give effect to the Nisga'a Final Agreement	99/12/14	00/02/10	Aboriginal Peoples	00/03/29	0	00/04/13	00/04/13	7/00
C-10	An Act to amend the Municipal Grants Act	00/03/28	00/04/10	National Finance					
C-13	An Act to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts	00/03/30	00/04/04	Social Affairs, Science and Technology	00/04/06	0	00/04/10	00/04/13	6/00
C-20	An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference	00/03/21							
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	99/12/14	99/12/15	–	–	–	99/12/16	99/12/16	36/99
C-23	An Act to modernize the Statutes of Canada in relation to benefits and obligations	00/04/12							
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	00/03/23	00/03/28	–	–	–	00/03/29	00/03/30	3/00
C-30	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	00/03/23	00/03/28	–	–	–	00/03/29	00/03/30	4/00

COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-202	An Act to amend the Criminal Code (flight)	00/02/08	00/02/22	Legal and Constitutional Affairs	00/03/02	0	00/03/21	00/03/30	2/00
C-247	An Act to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences)	99/11/02							
C-473	An Act to change the names of certain electoral districts	00/04/10							

SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-2	An Act to facilitate the making of legitimate medical decisions regarding life-sustaining treatments and the controlling of pain (Sen. Carstairs)	99/10/13	00/02/23	Legal and Constitutional Affairs					
S-4	An Act to provide for judicial preauthorization of requests to be made to a foreign or international authority or organization for a search or seizure outside Canada (Sen. Nolin)	99/11/02							
S-5	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	99/11/02	00/02/22	Social Affairs, Science and Technology					
S-6	An Act to amend the Criminal Code respecting criminal harassment and other related matters (Sen. Oliver)	99/11/02	99/11/03	Legal and Constitutional Affairs					
S-7	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	99/11/02	00/02/22	Privileges, Standing Rules and Orders					
S-8	An Act to amend the Immigration Act (Sen. Ghitter)	99/11/02							
S-9	An Act to amend the Criminal Code (abuse of process) (Sen. Cools)	99/11/03							
S-11	An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable (Sen. Perrault, P.C.) *(Dropped from Order Paper pursuant to Rule 27(3) 00/02/08)* *(Restored to Order Paper 00/02/23)*	99/11/04							
S-12	An Act to amend the Divorce Act (child of marriage) (Sen. Cools)	99/11/18							
S-13	An Act 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 whistleblowers (Sen. Kinsella)	99/12/02	00/02/22	National Finance					
S-15	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	99/12/16							
S-16	An Act respecting Sir John A. Macdonald Day (Sen. Grimard)	00/02/22							
S-20	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	00/04/05							

S-21	An Act to protect heritage lighthouses (Sen. Forrestall)	00/04/12

PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-14	An Act to amend the Act of incorporation of the Board of Elders of the Canadian District of the Moravian Church in America (Sen. Taylor)	99/12/02	99/12/07	–	–	–	99/12/08	00/03/30	

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