



Debates of the Senate

1st SESSION

•

37th PARLIAMENT

•

VOLUME 139

•

NUMBER 39

OFFICIAL REPORT
(HANSARD)

Tuesday, May 29, 2001

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THE HONOURABLE DAN HAYS
SPEAKER

CONTENTS

(Daily index of proceedings appears at back of this issue.)

Debates and Publications: Chambers Building, Room 943, Tel. 996-0193

Published by the Senate

Available from Canada Communication Group — Publishing,
Public Works and Government Services Canada, Ottawa K1A 0S9,

Also available on the Internet: <http://www.parl.gc.ca>

THE SENATE

Tuesday, May 29, 2001

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

Prayers.

[Translation]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in our gallery of His Excellency Gennady Seleznev, the Chairman of the Duma of the Federal Assembly of the Russian Federation, accompanied by a delegation of members from the State Duma of the Russian Federation.

[English]

We had the honour of meeting with our guests earlier today, in particular, with members of the Foreign Affairs Committee of the other place. They are completing what I hope for them has been an interesting and successful visit to the Parliament of Canada.

With Speaker Seleznev are Mr. Mihail Emelyanov, Mr. Nikolai Kiselev, Mr. Mikhail Musatov, Madam Antonina Romanchuk, Mr. Vitaly Safronov, Mr. Alexander Sizov, Mr. Igor Khankoyev, Mr. Sergei Chikulayev, Mr. Anatoly Usov, Mr. Boris Golovin and Ambassador Vitaly Churkin.

Honourable senators, I should also like to draw your attention to the presence in the gallery of Mr. Pavel Pelant, the Secretary-General of the Senate of the Czech Republic, and Mrs. Eva Bartonova, Director of International Relations, Department of the Senate of the Czech Republic.

On behalf of all honourable senators, I bid you welcome.

SENATORS' STATEMENTS

CANADA-RUSSIA PARLIAMENTARY GROUP

MEETING OF PARLIAMENTARIANS

Hon. Marcel Prud'homme: Honourable senators, I thank His Honour for bringing to our attention the presence in the gallery of an important delegation from the Russian Duma, which is the equivalent of our House of Commons. The delegation is headed by their speaker, as His Honour has said.

Honourable senators, I am happy to report to the Senate on one of the most successful meetings that ever took place. While there were nine parliamentary committees sitting in the House of Commons and the Senate, plus parliamentarians abroad, we succeeded in attracting over 30 members of both Houses,

between ten o'clock and eleven o'clock this morning, to the committee called Canada-Russia Parliamentary Group.

As honourable senators will remember, this parliamentary group was created at the request of our late Speaker, Senator Gildas Molgat. We followed up our meeting by enjoying the hospitality of Honourable Speaker Hays, who entertained our guests. I am pleased that the Canada-Russia Parliamentary Group has helped to cement our closeness.

Honourable senators, when you look at the geography of Russia, you can understand what the new Russia must cope with. In their delegation is a woman member from Vladivostok, which is just north of North Korea and next to China. She must travel across 11 time zones to attend Parliament. Imagine the vastness of Russia and the vastness of its neighbours, who are not always as friendly as we would like.

That is why I believe this group of parliamentarians is so important, honourable senators. Soon, a few of us will be asked to join for the next four years. It is important to show our Russian friends that many people in Canada care about what they must go through. Many Canadians believe that we could have closer trade, closer human rights, closer political levels and closer friendships.

Thank you and welcome.

FUTURE OF THE MONARCHY

Hon. Serge Joyal: Honourable senators, a few days ago, two ministers of the Crown questioned whether Canada should remain a constitutional monarchy. However, they did not put the issue in those terms. Instead, they simply suggested that we substitute a Canadian head of state for the Queen's heir when he should come to the throne as King. In their opinion, the monarchy is merely a foreign and anachronistic relic that has no particular significance for Canadians. At best, it is a worn-out vestige of a colonial past that has long outlived its usefulness.

• (1410)

I submit that, as senators, we have pledged our allegiance to the Queen. If our oath has any meaning, it invites us to reflect on the nature of our parliamentary system and the institutions that embody its values, including the Crown.

Let me begin by asking this question: What is the role of the Crown in our Constitution? Though few seem to realize or wish to acknowledge it, the Crown is no less than the fundamental structuring principle of our entire system of government.

Since the 15th century, Canada has been under the uninterrupted sovereignty of French and British monarchs, providing us with a unique sovereign lineage. Today, the sovereignty of Canada belongs to the Canadian people.

In 1867, the Fathers of Confederation conceived an unprecedented federal system that established the duality of the Crown, as expressed in the federal and provincial levels of government. Never before in history had the sovereignty of provincial legislatures and the federal Parliament been recognized under one Crown. The invention of this compound Crown, as Professor David Smith describes it, was a genuine, pragmatic and innovative solution devised by the Fathers of Confederation to respond to the polity.

The concept of an abstract, compound Crown representing the whole of the nation and its autonomous components permeated all of our political and judicial institutions. From this remarkable beginning, the most important feature of the Canadian constitutional monarchy has remained its adaptability.

The exceptional flexibility of the Canadian Crown was also illustrated with the constitutional reforms of 1982. With the repatriation of the Constitution, we recognized the primacy of the rule of law and we achieved the exclusive authority to determine the nature of our governmental system. The Crown lends itself to the will of the Canadian people. Canadians are the sole and absolute masters of their destiny as a nation. Thus, the concept of the Crown as an expression of our sovereignty has proven to be flexible and fully responsive to our political aspirations. The Canadian Crown is a symbol, an institution and an organic principle. Above all else, it is the expression of the continuity of our nation.

Contrary to what is thought by some, the Crown occupies a central place in our Parliament and democracy. It incarnates the transcendent essence of our existence as a nation. It remains above the political fray. It is even the ultimate safeguard of our constitutional liberty to enjoy our rights and freedoms of one united country.

[Translation]

Today's Quebecers are no longer prisoners of yesterday's clichés, victims or pseudo-modernists.

[English]

The Crown is an institution that reaches far beyond the transient circumstances of the day, binding us to shared history, traditions and values, to the Commonwealth of Nations that encompasses a quarter of the world's people. This is a significant component of our Canadian identity and ought not to be brushed aside lightly.

THE LATE BEVERLY MASCOLL, O.C.

TRIBUTE

Hon. Anne C. Cools: Honourable senators, I rise today to pay tribute to the late Beverly Mascoll of Toronto, who was claimed by breast cancer and passed away on May 16, 2001. Beverly Mascoll was a successful and lovely Black woman who always had time for others. She was a good person, a good wife and a

[Senator Joyal]

good mother. Beverly leaves behind her husband of 37 years, Emerson Mascoll, their one son, Eldon, and a host of friends.

Beverly Mascoll was a Black Nova Scotian, descended from Black United Empire Loyalists, free men and free women, while Emerson is of West Indian descent. Bev was born in Fall River, Nova Scotia, where the Ash Lee Jefferson School is named for her grandmother. She moved to Toronto as a teenager, where she has lived ever since. In 1970, she established Mascoll Beauty Supply Limited, which became one of Canada's largest distributors of beauty products for Black women. She was always active in the Black community, particularly with the Beverly Mascoll Community Foundation.

Beverly's husband, Emerson, attended St. Francis Xavier University with former Prime Minister Mulroney. Both Beverly and Emerson were friends of Mr. Mulroney.

Now retired, Emerson had been Vice-President of McGuinness Distillers and Vice-President of Nabisco Brands. He was also the first Black person to be appointed to the board of directors of Canadian National Railways.

Honourable senators, reflecting on the life of Beverly Mascoll, I am reminded of the Bible, in particular Psalm 98, verse 8:

Let the floods clap their hands: let the hills be joyful together.

Those of us who knew Beverly Mascoll found her to be an outstanding human being and a wonderful person. Beverly Mascoll, who received many awards and honours, including the Order of Canada, was the light and life of her husband, Emerson, and the inspiration of her son, Eldon.

Honourable senators, I extend to Emerson Mascoll, to Eldon and to the entire family my most sincere sympathy and love in this time of their loss and grief.

NATIONAL SAFE BOATING WEEK

Hon. Ione Christensen: Honourable senators, last week was National Safe Boating Week and the start of a new boating season in Canada. I am a member of the Yukon chapter of the Canadian Power Squadron, a national association that for years has been promoting safe boating through comprehensive training courses.

Boating in cold northern waters has always called for caution and taking responsible precautions. Unfortunately, with the availability of high-powered motors, improved boat design and Sea-Doos, the frequency of accidents and water fatalities has increased.

In April 1999, it was necessary to implement boating safety regulations with set limits on the age of users and horsepower of motors, and regulations providing for an operator's card, and mandatory safety equipment in each boat, from canoes to kayaks to power boats.

The sole purpose of these regulations is to reduce accidents and to save lives. Between 7 million and 9 million people enjoy Canadian waters each year, but, each year, over 200 Canadians needlessly die in boating accidents. Additionally, there are another 6,000 incidents of serious personal injury and loss of property.

The majority of these tragedies are preventable. Statistics tell us that in 40 per cent of all powerboat fatalities, the victims have blood alcohol levels above the legal driving limit. Drinking and boating is not legal, and it is a recipe for a one-way trip.

Honourable senators, I do a significant amount of boating, both paddle and power, and on each trip I see incidents of accidents waiting to happen: people with no life jackets or using them for cushions, overloaded boats, improper handling of high-speed craft and partying.

I urge Canadians to get their boating operator cards, to teach their children to respect and enjoy the water, to have a safe summer and to follow safety rules to ensure that all their boating trips are return trips.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of a delegation of judges from the Constitutional Court of Russia. This group is here as part of a study trip of the Canada-Russia judicial partnership project. They are the guests of our colleague, Honourable Senator Beaudoin.

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

ROUTINE PROCEEDINGS

STUDY OF PRESENT STATE OF DOMESTIC AND INTERNATIONAL FINANCIAL SYSTEM

BUDGET AND REQUEST FOR AUTHORITY TO ENGAGE SERVICES—REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE PRESENTED

Hon. E. Leo Kolber, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Tuesday, May 29, 2001

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

FIFTH REPORT

Your Committee, which was authorized by the Senate on Tuesday, March 20th, 2001, to examine and report upon the present state of the domestic and international financial

system, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of such study.

Pursuant to section 2: 07 of the Procedural Guidelines for the Financial Operation of Senate Committees, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

LEO KOLBER
Chair

(For text of report, see today's Journals of the Senate, p. 605.)

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

• (1420)

[Translation]

ADJOURNMENT

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

That, when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, May 30, 2001, at 1:30 p.m.

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

Hon. Senators: Agreed.

Motion agreed to.

[English]

NATIONAL FINANCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY ROLE OF GOVERNMENT IN FINANCING DEFERRED MAINTENANCE COSTS IN POST-SECONDARY INSTITUTIONS

Hon. Wilfred P. Moore: Honourable senators, I give notice that two days hence I shall move:

That the Standing Senate Committee on National Finance be authorized to examine and report on the role of government in the financing of deferred maintenance costs in Canada's post-secondary institutions; and

That the Committee report no later than the 31st day of October, 2001.

DEFENCE AND SECURITY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO CONDUCT
SURVEY OF MAJOR SECURITY AND DEFENCE ISSUES

Hon. Colin Kenny: Honourable senators, I give notice that on Wednesday, May 30, 2001, I shall move:

That the Senate Standing Committee on Defence and Security be authorized to conduct an introductory survey of the major security and defence issues facing Canada with a view to preparing a detailed work plan for future comprehensive studies;

That the Committee report to the Senate no later than February 28, 2002 and that the Committee retain all powers necessary to publicize the findings of the Committee until March 31, 2002; and

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

NOTICE OF MOTION TO AUTHORIZE COMMITTEE
TO ENGAGE SERVICES

Hon. Colin Kenny: Honourable senators, I give notice that on Wednesday, May 30, 2001, I shall move:

That the Standing Senate Committee on Defence and Security have power to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of its examination and consideration of such bills, subject-matters of bills and estimates as are referred to it.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE
TO PERMIT ELECTRONIC COVERAGE

Hon. Colin Kenny: Honourable senators, I give notice that on Wednesday, May 30, 2001, I shall move:

That the Standing Senate Committee on Defence and Security be empowered to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE
TO CHANGE NAME

Hon. Colin Kenny: Honourable senators, I give notice that on Thursday, May 31, 2001, I shall move:

That 86(11)(r) of the *Rules of the Senate* be amended:

by replacing the words "Senate Committee on Defence and Security" with the words "Senate Committee on National Security and Defence."

[Senator Moore]

ACCESS TO CENSUS INFORMATION

PRESENTATION OF PETITIONS

Hon. Lorna Milne: Honourable senators, I am at it again. I have the honour to present 862 signatures from Canadians from the provinces of British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick, Prince Edward Island and Nova Scotia who are researching their ancestry, as well as signatures from 126 people from the United States who are researching their Canadian roots. A total of 988 people are petitioning the following:

Your petitioners call upon Parliament to take whatever steps necessary to retroactively amend the Confidentiality-Privacy clauses of Statistics Acts since 1906, to allow release to the Public after a reasonable period of time, of Post 1901 Census reports starting with the 1906 Census.

These 862 signatures are in addition to the 9,704 I have presented in this calendar year, for a total of 10,722 signatures presented to the Thirty-seventh Parliament and over 6,000 to the Thirty-sixth Parliament, all calling for immediate action on this very important matter of Canadian history.

QUESTION PERIOD

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS—
POSSIBLE CHANGE TO BASIC VEHICLE REQUIREMENTS—
EFFECT ON INVOLVEMENT OF EUROCOPTER

Hon. J. Michael Forrestall: Honourable senators, my question is directed to the Leader of the Government in the Senate. I asked specifically the other day whether the new basic vehicle requirement specification for the helicopter replacement program would be changed to suit Eurocopter, as I had heard, from quite reliable sources, that they were claiming the standards were too high. I have reviewed the requirement specifications on the vehicle, and they have been lowered significantly, to two hours and 20 minutes plus 30 minutes reserve from the government's absolute lowest standard of two hours and 50 minutes plus the 30-minute reserve found in the Statement of Operating Intent.

Why has the government now decided to lower the basic vehicle requirement specification so drastically?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, before we adjourned for our break the honourable senator asked a question that concerned me. I immediately sought out the requested information for him. I have been told that there is no change in the Maritime Helicopter Project's stated endurance requirement. After extensive analysis, DND determined that the new maritime helicopter should be capable of remaining airborne for two hours and 50 minutes under normal circumstances, with a 30-minute fuel reserve, and two hours and 20 minutes with a 30-minute fuel reserve under extreme heat conditions.

Senator Forrestall: Honourable senators, this is almost incredible. A reduction from the ISA 20 only requires an endurance reduction from the two hours and 50 minutes plus a 30-minute reserve to two hours and 43 minutes plus the 30-minute reserve. The ISA 20 is plainly and simply a red herring to lower the standard to suit Eurocopter as they must be able to hover on take-off on one engine for up to one hour. It is a safety feature and that cannot be done with a full load of fuel.

Will the minister come clean in this chamber and tell us why the government is skewing the competition to suit Eurocopter?

Senator Carstairs: Honourable senators, the honourable senator makes very serious charges in his statement. The acquisition of the new maritime helicopter is based on a fair, open and transparent competitive process.

• (1430)

Senator Forrestall: This is where we were months ago.

Senator Carstairs: The honourable senator indicates that the operational requirements have been changed. They have not been changed. They are exactly the same as they were in August 2000 when the bid was put forward. The operational requirements for maritime helicopters are based on extensive military analysis and realistic operational scenarios of Canada's contemporary needs.

Senator Forrestall: I am at a loss, honourable senators. I do not understand — unless some hanky-panky is going on somewhere — why we would lower the standard to include a helicopter that is not even marine oriented; a helicopter that cannot take off and hover for one hour on one engine; a helicopter that only has two engines as opposed to three. What are we doing to the men and women who have to fly and operate these machines? Just what in the name of God is going on?

REPLACEMENT OF SEA KING HELICOPTERS—BRIEFING OF LEADER OF THE GOVERNMENT ON COMPETITION

Hon. J. Michael Forrestall: Honourable senators, let me ask the minister a question that I asked her the other day: Has the minister had a briefing on this matter? If the minister has had a briefing, did it cover these questions?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, clearly we have a disagreement here. The

senator indicates that we have lowered the standard. I have told the senator that the standard has not been lowered.

As to whether I have had a briefing, the answer is no. However, as of this morning, I was given three dates when I could have a briefing by the ADM of Public Works, Jane Billings. That briefing will take place between now and June 11. I will ask the honourable senator's questions at that particular briefing when it is confirmed.

Senator Forrestall: I will ask Colonel Myrhaugen and the Friends of Maritime Aviation whether they will give the honourable leader a briefing and see what they have to say. We will deal with the matter in the fall, after lives may have been placed in jeopardy.

The minister is incredible, absolutely incredible.

REPLACEMENT OF SEA KING HELICOPTERS—POSSIBLE CHANGE TO BASIC VEHICLE REQUIREMENTS—EFFECT ON INVOLVEMENT OF EUROCOPTER

Hon. David Tkachuk: Honourable senators, I should like to follow up on Senator Forrestall's question. He mentioned Colonel Lee Myrhaugen, coordinator of Friends of Maritime Aviation. Colonel Myrhaugen said in an interview in the *Ottawa Citizen* on May 27 that he flew the Sea King for four consecutive hours. The original statement of requirement to replace the Sea King stipulated an endurance requirement of four hours, plus a 30-minute reserve.

Now we understand the requirement to be two hours and 20 minutes, plus the reserve. Why is the government seeming to skew this competition to suit Eurocopter's Cougar, which is less of a helicopter than the Sea King when it first entered Canadian service?

Hon. Sharon Carstairs (Leader of the Government): The honourable senator asks essentially the same question that the previous senator asked. The requirements as set forth in August 2000 have not been changed.

Senator Tkachuk: Honourable senators, I hear what the Leader of the Government is saying, but the standards have changed. It is not a question of a difference of opinion; it is a question of fact. How can the government buy a lesser helicopter, in terms of endurance — a basic requirement — than the Sea King, which came into Canadian service in 1963? That is essentially what the government has done. We had the minister's assurance that there would be no reduction in requirements to suit Eurocopter. Why the change in such a telling, critical and essential operating requirement?

Senator Carstairs: I will repeat for the honourable senator that the operational requirements for the Maritime Helicopter Project were decided by the military through extensive military analysis and realistic operational scenarios of Canada's contemporary needs.

Hon. J. Michael Forrestall: Then why were they changed?

Senator Carstairs: What Senator Forrestall asked several weeks ago was why the requirements had been changed from the original project to now. The answer is that there has been no change since August 2000, when the proposal was set forth.

Hon. Pat Carney: Honourable senators, I have a supplementary question on this topic. This is more the territory of Senator Forrestall, but he is on another coast. I am from one of the wildest and certainly one of the longest coasts in the world.

If the operational requirements have been reduced as stated, could the Leader of the Government please describe the range of operations under the requirements announced here?

If one is operating on the coast of B.C. from Comox, for example, there is a marked difference in how much search and rescue one can do in four hours and the ability to hover, and the amount of search and rescue and the territory one can cover in two hours and 20 minutes.

Senator Carstairs: Honourable senators, let us be clear. The amount of time is not two hours and 20 minutes. The amount of time is two hours and 50 minutes, plus a 30-minute reserve, except under extreme heat conditions, which we in Canada do not experience very often. Granted, we do get it occasionally; unfortunately, northern Alberta is suffering extreme heat conditions at the present time. The reality is that there was a list of qualifications from the very beginning of this project.

Senator Carney: Honourable senators, if there is a decrease in any of these criteria that the honourable senator has given, there is a decrease in the range and the scope of operations that can be carried out in search and rescue missions on the B.C. coast. I would ask the minister to please report to the chamber what that diminished range and operating capacity is in terms of the coast of British Columbia, Vancouver Island and the North Pacific, all areas in which our search and rescue operations are vital.

Senator Carstairs: As I have said, honourable senators, there is no diminished capacity, but I will ask the question again. If there has been a change, I would be pleased to present the honourable senator with a new, updated answer.

Hon. Terry Stratton: Honourable senators, I may drive the Leader of the Government in the Senate up the wall, but I will persist in this line of questioning. I should like to go through the history of what has transpired since 1992.

In 1992, the requirement for helicopter endurance was four hours, plus a 30-minute reserve. In 1996, it was lowered to three hours, plus a 30-minute reserve. In 1999, it was lowered to two hours and 50 minutes. Now it has been lowered to two hours and 20 minutes, plus the reserve. In 1963, the Sea King went for four hours.

We have asked this question again and again. Why has the statement of requirements changed so radically? The Leader of the Government says it has not changed since 2000, but as I have just explained, it has changed four times. We want to know why the change.

The minister says it has not changed since 2000, but it has changed dramatically from the time our government put out the requirement for four hours, plus 30 minutes.

Senator Tkachuk: We all know why. They just do not want to admit it.

Senator Carstairs: The operational requirements for the helicopter program are based on what the military told us it required for its operational scenarios in 2001.

Senator Forrestall: The military did not change it, and you know that.

Senator Carstairs: The military made this determination. One presumes it knows what it is doing in terms of understanding its capacity and its needs.

Senator Forrestall: Is that what happened to Ran Quail?

Senator Stratton: Honourable senators, I think the Leader of the Government in the Senate must go back and find out why. It is fine to say that the military has given the requirements. The critical question is this: Why has the requirement changed from four hours to two hours and 20 minutes? That matter must be addressed.

The 1999 statement of requirements for the maritime helicopter states that two hours and 20 minutes of endurance time for a maritime helicopter will risk failure 50 per cent of the time. How could the government sacrifice a basic requirement that seals the fate of 50 per cent of all missions before the helicopters leave the decks of the ships?

• (1440)

Senator Carstairs: I wish to correct the honourable senator's information. It is two hours and 50 minutes, plus 30 minutes of reserve time.

That is the specification as presently outlined. The exception is extreme heat. Having spent 21 years of my life in Atlantic Canada, I do not remember ever experiencing extreme heat.

Senator Stratton: Honourable senators, it may be that they are required to do that. If my honourable friend wants to risk that failure and is willing to put that down on the record, that is her choice. I happen to believe that she is protecting a certain Prime Minister. She is protecting him because he said in the 1993 election campaign that the EH-101 was a Cadillac and that we did not need it. Therefore, the standard was lowered. Is that true or is it not?

Senator Carstairs: If I thought that I needed to protect this Prime Minister, I would do so gladly. Fortunately, I do not. His decisions have been respected by the Canadian public three times in a row.

Senator Tkachuk: Honourable senators, if the Leader of the Government in the Senate is saying that the military has changed its requirements four times since 1993, do the Minister of Defence, the cabinet and the Prime Minister agree with these changes? Is that the policy of the government?

Senator Carstairs: Honourable senators, the policy of the government is to take the advice of the military experts.

Senator Forrestall: Honourable senators, there is no question that the standard has been lowered. Was that done to accommodate Eurocopter, which could not meet the military statement of requirements? If that is the case, why must the supplier be Eurocopter?

Senator Carstairs: Honourable senators, I am in danger of repeating myself once again. The operational requirements for the Maritime Helicopter Project were based on extensive military analysis.

Senator Forrestall: Certainly they were. Why does the government not adhere to the recommendations?

PRIME MINISTER'S OFFICE

REQUEST FOR STATEMENT ON CONVENTION OF COLLECTIVE CABINET RESPONSIBILITY

Hon. Lowell Murray: Honourable senators, on another matter, I should like to ask the Leader of the Government in the Senate to obtain from the Prime Minister a formal statement on the status of the convention of collective cabinet responsibility in this government.

The obvious precedent that has been set by Mr. Manley in advocating, obviously without cabinet authority to do so, the most fundamental of all constitutional changes raises the question as to whether the convention of collective cabinet responsibility has been suspended for some ministers or on some subjects. Could the leader obtain a formal statement on this project, because it is quite central to the proper functioning of our system of government?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, that is an interesting question. I will attempt to obtain from the Prime Minister a formal convention of collective cabinet responsibility, as requested.

[Translation]

DELAYED ANSWER TO ORAL QUESTION

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table

in this House a delayed answer to a question raised by Honourable Senator Rivest on May 1, 2001 regarding the census questionnaire and Canadian linguistic duality.

STATISTICS CANADA

CENSUS QUESTIONNAIRE—CANADIAN LINGUISTIC DUALITY

The reporting of ethnic origin or ancestry has changed over time partly as a result of changes in census questions and partly as a result of the way individuals identify their origins. However, the census can be used to measure the number of anglophones or francophones for Acadian or any of the cultural groups reported in the census.

Canada is a world leader in the collection of data on language. The census can be used to monitor a number of trends in the number and characteristics of anglophones and francophones. A question on mother tongue has been included in all censuses since 1921 and questions on home language and knowledge of official languages have been included in more recent censuses.

Moreover, for the 2001 Census, there are two new questions that will allow for an even more in-depth analysis of language knowledge and use. In particular a question on all languages spoken at home and a new question on language of work has been added to the census.

ANSWER TO ORDER PAPER QUESTION TABLED

JUSTICE—SALE OF AIRBUS AIRCRAFT TO CANADA— STATUS OF RCMP INVESTIGATION

Hon. Fernand Robichaud (Deputy Leader of the Government) tabled the answer to Question No. 9 on the Order Paper—by Senator Lynch-Staunton.

PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

The Hon. the Speaker: Honourable senators, I should like to introduce the new pages from the House of Commons.

On my right is Andrée-Anne Maranda, a psychology student in the Faculty of Social Sciences at the University of Ottawa. Andrée-Anne is from Saint-Georges-de-Beauce, in Quebec.

[English]

On my left is Jamie Furniss. He is studying in the Faculty of Arts at the University of Ottawa. Jamie is from Whitehorse, Yukon.

ORDERS OF THE DAY

JUDGES ACT

BILL TO AMEND—THIRD READING

Hon. Joan Fraser moved the third reading of Bill C-12, to amend the Judges Act and to amend another Act in consequence.

She said: Honourable senators, I stand as a poor stand-in for Senator Grafstein, the sponsor of this bill, who unfortunately must be elsewhere this day on Senate business. Therefore, I shall not attempt to imitate his wide-ranging and learned remarks on second reading. I will simply make a few brief comments.

Bill C-12 proposes amendments to the Judges Act to ensure appropriate compensation for the federally appointed judiciary in Canada. It is intended to implement the commitments made by the government in its response to the report of the 1999 Judicial Compensation and Benefits Commission.

[Translation]

Honourable senators, the strength of Canada's judiciary is a key factor in our nation's prosperity. Judges are an important pillar of our democratic society. The Canadian judiciary system is the envy of the whole world because of its quality, its dedication and its independence. Our courts and judges are increasingly seen as models of integrity and impartiality by developing democratic nations that are trying to set up fair and effective systems. Even countries with a very long history are taking an interest in our system. In fact, some judges from Russia are visiting us today.

[English]

Like so many of the rights and advantages enjoyed by all Canadians, the importance of an independent judiciary cannot be underestimated or taken for granted.

During his recent visit to China, the Prime Minister commented on the importance of an independent judiciary when he stated:

For no matter how well the laws are written, there can be no justice without a fair trial overseen by a competent, independent, impartial and effective judiciary. A judiciary that applies the law equally for all citizens, regardless of gender, social status, religious belief or political opinion.

Honourable senators, the three constitutionally required elements of judicial independence are security of tenure, independence of administration of matters relating to the judicial function, and financial security. It is directly in support of the principle of judicial independence that section 100 of the Constitution entrusted the fixing of judicial salaries, allowances and pensions to Parliament in 1867. Therefore, the 1999 commission's recommendations are not and cannot be binding. It

is on Parliament that the Constitution has conferred the exclusive authority and responsibility for establishing judicial compensation. However, in the light of a ruling by the Supreme Court, where Parliament decides to reject or modify the commission's recommendations, it is legally and constitutionally required to give publicly a reasonable justification for this decision.

Through Bill C-12, the government is proposing implementation of most of the recommendations of the Judicial Compensation and Benefits Commission, including proposed salary increases and some modest improvements to pensions and allowances. In light of all of the factors considered by this independent commission, including trends in both the private and the public sectors, the government is of the view that the proposals in Bill C-12 are within the range of what is reasonable and adequate to meet the constitutional principle of financial security.

• (1450)

However, the government is not prepared to implement all of the commission's recommendations. Specifically, the government is deferring a proposal that would increase the numbers of supernumerary or part-time judges, pending the outcome of important consultations with the provinces and the territories.

In addition, honourable senators, the government has not accepted the commission's recommendation in respect of legal fees, because the commission's proposal does not establish reasonable limits to these expenditures. Instead, the government is proposing a statutory formula that is designed to provide for a reasonable contribution to the costs of the participation of the judiciary while, at the same time, limiting their scope.

[Translation]

The government is committed to respecting the judiciary's independence, which is a fundamental condition for the preservation of the rule of law in our democratic system of government.

Canada is proud to have a judiciary that is the envy of the whole world because of its competence, its dedication, its independence and its impartiality.

[English]

Honourable senators, Bill C-12 has been brought forward precisely to safeguard the principle of judicial independence, and I commend it to you for your consideration.

[Translation]

Hon. Gérald-A. Beaudoin: Honourable senators, Bill C-12 amends the Judges Act to increase the salaries and allowances of federal judges, improve their annuities scheme by making it more flexible, and create a separate life insurance plan.

This bill seems to me to respect the rule of law. Committee study also bears this out. Various issues were raised and the committee decided to report the bill without amendment. In particular, Bill C-12 seems consistent with the spirit and the letter of the Reference Regarding the Remuneration of Judges.

Bill C-12 embodies the principle of independence of the judiciary. In fact, this bill was the follow-up to the report of the Judicial Compensation and Benefits Commission, which came about as a result of the Reference Regarding the Remuneration of Judges.

Incidentally, judicial independence in Canada is ensured by constitutional provisions, constitutional conventions and a long tradition, Supreme Court of Canada decisions, documents which are part of our constitutional law, and the preamble to the Constitution, 1867, as well as the Act of Settlement, 1701. The Canadian Charter of Rights and Freedoms also contains certain principles helping to guarantee the independence of the courts.

Section 99 of the Constitution Act, 1867, enshrines the independence of the judicial power of the superior courts. This section is one of fundamental law.

The criteria determining the extent of judicial independence were first set out in *Valente*. Judicial independence is characterized by security of tenure, financial security, and complete autonomy within the function of judge — institutional independence. These criteria are examined from the point of view of a reasonable person.

In the Reference Regarding the Remuneration of Judges, after a brief examination of sections 96 through 100 of the Constitution Act, 1867, subsection 11(d) of the Canadian Charter of Rights and Freedoms, and the related precedents, Chief Justice Lamer expresses the opinion that the principle of the independence of the judiciary was, initially, an unwritten constitutional principle. The source of this principle dates back to the Act of Settlement, 1701. The principle was recognized and confirmed by the preamble to the Constitution Act, 1867, hence the significance of the preamble to the Constitution of Canada. Thus, the principle of an independent judiciary was transferred to Canada by the constitutional text of the preamble to the Constitution Act, 1867.

It is clearly evident that, since the coming into effect of the Canadian Charter of Rights and Freedoms, the power of the judiciary has increased in importance; its visibility has been enhanced. It has been said that decisions by unelected judges undermine the very foundations of democracy. I do not agree. As now Chief Justice Beverley McLachlin wrote in an article of doctrine:

[English]

Far from posing a threat to democratic society, a strong judiciary is essential to the maintenance of our democratic institutions.

Hon. Anne C. Cools: Honourable senators, I rise to speak to third reading of Bill C-12. On May 9 last, I laid out the history of judges' remuneration in Canada and its statutory charges against the Consolidated Revenue Fund. I expressed doubts about the process of the Judicial Compensation and Benefits Commission and the setting of judges' salaries. Then, as now, I take no issue with the quantum of salaries or the fact of salary raises. I believe that judges should be adequately remunerated. I repeat: My concern is with the process.

I expressed my misgivings about this bill's exclusion of Parliament and the public representative interest in the setting of judicial salaries. I raised the fact of the roles of certain justices in setting the priorities for public and parliamentary expenditures and their trenching on Parliament's control of the purse, as well as the financial initiatives of the Crown.

Honourable senators, Minister of Justice Anne McLellan appeared before the Standing Senate Committee on Legal and Constitutional Affairs in respect of Bill C-12 on May 10. Minister McLellan's testimony revealed that she is not that well acquainted with the Judges Act, its history, its application and its scope. Further, she seemed not to comprehend the proper constitutional relationship between the judges and Parliament. Minister McLellan seemed to have an insufficient grasp of the history of the Liberal Party's historical and constitutional position on the same, both in Canada and in the United Kingdom.

Senator Andreychuk asked the minister about the international judicial projects, the ministerial and judicial supervision of same and about the funding from the Canadian International Development Agency, CIDA, for these projects. The minister responded, saying:

As I know from my own experience visiting countries around the world, we could be in dozens of countries helping to educate judges and to build the culture of respect for the rule of law and the independence of the judiciary.

The minister said much about Canadian judges bringing the rule of law to underdeveloped countries. I asked the minister about the statutory authority for the international endeavours of these judges, saying:

It was always my understanding that the phenomenon of bringing the rule of law to nations who do not have it, or who lack it, was a political question. When I was growing up, we called it "colonialism." The British called it the "*pax Britannica*." That is a political role, taking the rule of law to other nations, particularly developing nations. It is a political role, not a judicial one.

Could the minister tell us what authority in the Judges Act can be relied upon for the current involvement of judges across the world?

• (1500)

The minister responded, saying:

However, judges have a larger obligation to help, where called upon, to assist those who are trying desperately to create functioning and stable democracies.

She confirmed my assertion that the Judges Act provides for no such obligation in principle or in law. About the so-called authorizing sections of the Judges Act for these judicial international actions, the minister said:

Sections 56 and 57 are not explicit, but do signal the fact that judges may be called upon to do those things over and above their duties sitting in judgment on whatever court they are appointed to.

Honourable senators, the minister stated that her reliance was on two sections of the Judges Act, which she immediately said were not explicit. This is staggering. Honourable senators, they are not only inexplicit, but they are in point of fact contrary. There is absolutely no authority in sections 56 and 57 of the Judges Act for the international activities of Canadian judges. Further, the Judges Act has no international application and is of domestic application only.

The minister then engaged on the Justice Louise Arbour amendment to the Judges Act in the 1996 Bill C-42, from which Madam Justice Arbour became the Chief Prosecutor for the United Nations International Tribunal on Rwanda and Yugoslavia. The minister's misunderstanding of Bill C-42 and her ambiguous insistence on non-existent statutory authority in the Judges Act for the international activities of judges were curious. The fact is that in 1996, Bill C-42 came to the Senate seeking a very wide and general authority for all judges to be able to go abroad to work for international organizations. The Senate said no, and limited the authority solely to Madame Justice Louise Arbour, who, in the most extraordinary procedure, was identified personally in Bill C-42. Before its passage, Madam Justice Arbour had already departed Canada to become the Chief Prosecutor. Her judicial absence was authorized by three Orders in Council, the legality of which is still unclear. The Senate understood that the international activities of judges as proposed in that bill were inherently political in nature, and the Senate, concurred with by the House of Commons, said no, and legislated that the single exception to the general prohibition would be Madam Justice Louise Arbour.

Honourable senators, I shall cite the relevant sections of the Judges Act mentioned by the minister, sections 56 and 57. First, I shall cite section 55 whose marginal note reads, "Judicial duties exclusively." Section 55 states:

No judge shall, either directly or indirectly, for himself or others, engage in any occupation or business other than his

[Senator Cools]

judicial duties, but every judge shall devote himself exclusively to those judicial duties.

Section 56 is telling because it places any and all extra judicial duties squarely into the legislative authority of Parliament and does so in express language. These international activities of the judges, their building of democracy in developing and Third World countries, are not within the legislative authority of Parliament. Such international activities of building international governments fall within the law of the royal prerogative and the law of nations, not within the authority of Parliament. Section 56, whose marginal note reads, "Acting as commissioner," which the minister says is her authority for the international activity of judges, reads in part:

56.(1) No judge shall act as commissioner, arbitrator, adjudicator, referee, conciliator or mediator on any commission or on any inquiry or other proceeding unless

(a) in the case of any matter within the legislative authority of Parliament, the judge is by an Act of Parliament expressly authorized so to act or the judge is thereunto appointed or so authorized by the Governor in Council ...

Section 57, the minister's other authority, reads in part:

57.(1) Except as provided in subsection (3), no judge shall accept any salary, fee, remuneration or other emolument or any expenses or allowances for acting in any capacity described in subsection 56(1) or as administrator or deputy of the Governor General or for performing any duty or service, whether judicial or executive, that the judge may be required to perform for or on behalf of the Government of Canada or the government of a province.

Honourable senators, very clearly there is absolutely no authority in the Judges Act, sections 56 or 57, for any judge of Canada to assist Third World countries to build democracy because the Judges Act understands that the development of democracy outside of Canada is a political function, not a judicial one. The Judges Act has no international application or scope.

Honourable senators, the statutory authority for those judges' international good nation building is a recurring question commanding our study. I should like to quote the then Chief Justice of the Supreme Court of Canada in a broadcast on CPAC, December 9, 1996, just days after the adoption of Bill C-42 as amended by the Senate. In that program, *A Public Life with Antonio Lamer*, Chief Justice Lamer, commenting on the Senate's amendment to the Arbour proposal, said:

I was a little disappointed when the Senate amended this Arbour amendment...

The then Chief Justice told the viewers why, saying:

And that amendment would have made it more easy to meet the expenses because judges, as you know, were supposed to receive money only under the Judges Act, and it's a little dicey there, and that when that amendment was made to bring back down to just Madame Justice Arbour, I was a little disappointed, but I found another way, and I'm going to be having lunch today with Madame Huguette Labelle, the head of CIDA, then I think we're going to go through CIDA. Well, where there's a will, there's a way.

Insistent, the then Chief Justice Lamer continued:

I will be very proud to see 20, 30, 40 judges of Canada at no Canadian judge's expense ... go around the world ...

...these judges that are available, ready to go, these judges, will be going. I'm speaking to Madame Labelle. As I said, I'm having lunch with her today, then I will be speaking to the Commissioner of Judicial Affairs Friday. I'll have lunch with him Friday and I think we'll get the ball rolling very soon.

That was only days after the Senate had said no to his proposals.

Honourable senators, eight months later, then Chief Justice Lamer was interviewed by Cristin Schmitz, again on this question. This was reported in an August 29, 1997 *Lawyers Weekly* article headlined, "Canada's new global role: ...Juges sans frontières." Cristin Schmitz wrote about the international projects of the then Chief Justice Lamer and of Commissioner for Federal Judicial Affairs, Guy Goulard. She wrote:

Mr. Goulard coordinates a growing number of highly successful international judicial cooperation projects, many of which are financially supported by the Canadian International Development Agency (CIDA).

She wrote about the then Chief Justice Lamer's role:

'Juges sans frontières' or 'Judges Without Borders' is how Chief Justice Antonio Lamer smilingly refers to his brainchild.

She went on to say that Chief Justice Lamer:

... is one of the main forces behind the country's role in the international justice arena ...

Informed of the Senate debate and the Senate's limitation of his proposals, she asked him:

During debates in the last Parliament, some Senators argued that permitting off-the-Bench foreign activities by Canadian

judges will undermine the public's confidence in the judges' impartiality.

She quoted his response about the Senate, saying:

I don't think that criticism was valid, and I don't think that most members of the Senate agreed with that criticism," Chief Justice Lamer remarked.

Honourable senators, as a senator involved with that bill, I wrote a letter to the editor in answer to the Chief Justice's remarks. *The Lawyers Weekly* published my letter *in toto* on September 12, 1997. I wrote:

After considerable reflection, and respectful of the convention that Canadian judges not engage Parliament in public debate, or in public policy, or question Parliamentary proceedings, I feel compelled as a Senator to respond to the Honourable chief justice's remarks.

Challenging the then Chief Justice, my letter continued:

I have the gravest concerns about the chief justice's statements regarding the validity of the Senate's opinions and actions to prohibit non-judicial, off-the-Bench international activities by Canadian judges, and the Senate's corollary assertion of the public interest in judges' impartiality, integrity, and judicial exclusivity.

About the Senate, he said, "I don't think that criticism was valid, and I don't think that most members of the Senate agreed with that criticism ...".

Chief Justice Lamer's statements were misleading. The facts are to the contrary.

The Senate's vote on Bill C-42 was unanimous. The unanimous vote at Third Reading, on Nov. 7, 1996, upheld a general ban on Canadian judges' international activities and remuneration for same and affirmed the Judges Act, ss. 54 to 57. That unanimous vote is recorded in Senate Debates at p. 1138.

Simultaneously, in that same vote, the Senate legislated, albeit reluctantly, a sole exemption to that general prohibition.

That sole exemption was Madam Justice Louise Arbour, and the Senate motion of Nov. 7, 1996 cited her specifically by name in s. 56.1(1) as the sole and singular exemption to this statute.

Contrary to Chief Justice Lamer's statements, the Senate definitively and unambiguously declared its will, intent, and validity.

• (1510)

My published letter continued:

On yet another occasion, during the Senate debate itself, in a letter to the Minister of Justice Allan Rock dated Nov. 6, 1996, Chief Justice Lamer wrote:

May I add with respect to the proposals in Bill C-42 contained in s. 56.1(1) that it is extremely unfortunate that the Senators objecting to this general amendment have completely misunderstood its purpose.

Senators were informed of the financial, remunerative and procurement questions involved in Canadian judges' non-judicial, off-the-Bench international activities.

The Senate was aware of the Chief Justice Lamer's, and other honourable justices', wishes and interests regarding Canadian judges' international sojourns. The Senate rejected them.

The Parliament of Canada defeated them, and legislated otherwise and contrarily.

I concluded my letter, saying:

It is deeply troubling that the chief justice has ignored the clearly expressed will of Parliament, and has gone behind Parliament and Parliament's statutes.

I trust that the chief justice will apologize to the Senate for his comments on the political position and the politics of Canada's Senators.

Honourable senators, I move back to Bill C-12. On May 17, 2001, at the Legal and Constitutional Affairs Committee, I opposed and voted against clause 18 of Bill C-12 because I saw it as novel and a blank cheque. The Judicial Compensation and Benefits Commission had expanded the financial role of the Judges Act by adding section 26 in 1998. Now Bill C-12 is creating a novel charging mechanism, being section 26.3. Bill C-12's new section 26.3 of the Judges Act will create a new and additional mechanism under the Judges Act to make statutory charges against the Consolidated Revenue Fund. This is unusual and, to my mind, unacceptable. This section will also allow the commission to determine payments and charges on the Consolidated Revenue Fund. Once again, Parliament has been excluded, and the rights of Canadians' representative control over the public purse has been circumvented.

Honourable senators, I conclude on a most recent judicial development. I speak of the judiciary's daily involvement as publicists and propagandists. This new-found publicist and public propagandist role for judges in Canada today is unparalleled in our constitutional history. It is commanding

[Senator Cools]

Parliament's attention. Every day, on television and in the newspapers, we see judges in full media flight.

The proper role of judges in relation to propaganda needs some clarification. The proper role of judges in respect of media, propaganda and publicist roles was best articulated by then British Lord Chancellor, Lord Kilmuir, and was known as the Kilmuir Rules. In 1955, Lord Kilmuir wrote a letter to Sir Ian Jacob, the BBC's Director-General, regarding judges, media, and broadcasting, which became known as the Kilmuir Rules and were published in the *Public Law 1986*. Lord Chancellor Kilmuir wrote:

... the overriding consideration ... is the importance of keeping the Judiciary in this country insulated from the controversies of the day. So long as a Judge keeps silent his reputation for wisdom and impartiality remains unassailable: but every utterance which he makes in public, except in the course of the actual performance of his judicial duties, must necessarily bring him within the focus of criticism. It would, moreover, be inappropriate for the Judiciary to be associated with any series of talks or anything which could be fairly interpreted as entertainment: and in no circumstances, of course, should a Judge take a fee in connection with a broadcast.

My colleagues and I, therefore, are agreed that as a general rule it is undesirable for members of the Judiciary to broadcast on the wireless or to appear on television.

These are the Kilmuir Rules as articulated by the Lord Chancellor.

The Hon. the Speaker: Senators Cools, I regret to advise that your 15 minutes have expired. Are you asking for leave to continue?

Senator Cools: I have only one paragraph left.

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

Hon. Senators: Agreed.

Senator Cools: Honourable senators, it used to be held that the unassailability of judges, founded in moral character in the rules against public and political engagement, both buttressed by the political convention called judicial independence, were the cornerstone of a secure and protected judiciary, guarded and protected by Parliament. This view is in sharp contrast to the current bandying about of the frequently misused and misapplied term "judicial independence." Such misapplication of the term is, at worst, self-serving and, at best, cant. "Cant" is a word that seems to have fallen into disuse in recent years. Nevertheless, it is, at best, cant. The British Constitution gave us in Canada constitutional comity, parliamentary sovereignty, and the political convention of judicial independence. We should honour and uphold our constitutional heritage and in so doing, honourable senators, we will uphold and honour the judges.

Hon. Edward M. Lawson: Honourable senators, I will be very brief in the interests of speed and processing this legislation along. Just to restore the debate, I do believe that this bill is primarily a salary bill, and I thought it might be important to point that out.

I think it is also important to note that in the review undertaken by the Judicial Compensation and Benefits Commission, established by the Supreme Court for that purpose, the commission has made reasonable recommendations for increases. Those of us who have some experience with judges know that they work very hard and are worth every penny that they get, and these proposed increases will certainly not make them overpaid. It is important that we recognize that.

I also think, in reviewing quickly the report of the commission to review allowances of parliamentarians, it seems that our future, as far as increases are concerned, flows from the Judicial Compensation and Benefits Commission. In the future, as I read this, the salary of the Chief Justice of the Supreme Court will determine the salary of the Prime Minister. In the future, whatever adjustment is made there will flow from the Chief Justice to the Prime Minister, and it will flow from the Prime Minister to members of Parliament, and ultimately will find its way here.

In the immediate case before us, since it seems that our fate is to be based on the passing of the judges' bill, it seems to me that it would be good practical sense to pass the judges' bill before we get to our bill, which will follow quickly on the heels of this one, and may pass through Parliament with lightning speed, with the exception of the issue of parity, which may cause a delay — and should cause delay. I think it is important that we get the judges' bill, Bill C-12, passed today, so that when the other bill comes hurtling from the other place over to this house at warp speed, we will be in a position to pass that one quickly, as well.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I support the bill, as I supported it at second reading. However, I think that it is incumbent upon the government to give us its views in relation to some of the views that have been expressed by the penultimate speaker, our colleague Senator Cools.

Reference was made to the position as articulated by the Minister of Justice. Earlier in the day, a question was put to the Leader of the Government in the Senate regarding the principle of cabinet solidarity. Therefore, it seems to me that it is incumbent upon the minister, as the government representative in the Senate, to respond. By their silence, the leadership in this chamber could indicate that they are accepting the propositions advanced by Senator Cools. If this is the case, we obviously have

a contradiction within the bosom of cabinet. If not, then what is the case contrary?

In particular, it seems to me that this house should know the government's position on Canadian judges who engage in what I believe to be very important and very valuable international work, as Canada makes its contribution to civil society but also to systems of governance around the world, including the great institution of the judiciary.

• (1520)

As honourable senators know, many thinkers are of the view that three basic institutions in democratic society serve to protect and promote the rights of the people. They are our legislative institutions, civil society or non-governmental organizations, and the independent judiciary. Clearly, we are supportive of the efforts made by members of the Canadian judiciary as part of Canada's international work in the development of democratic societies around the world. It seems to me that this should be the position articulated by the government in either accepting or not accepting the view. Reference has been made to sections 56 and 57 of the Judges Act.

Reference was also made to the statement of the Minister of Justice in committee concerning the application of Bill C-42 and that the minister's position demonstrates a misunderstanding of that act. Does the leadership of the government in the Senate accept that proposition or not?

Reference was made to three Orders in Council. As I listened, there seemed to be some question as to the propriety of those three Orders in Council.

What is the response of the government to Senator Cools' points, in particular the point that by participating in CIDA-sponsored events outside Canada, judges are accepting a salary which is a salary coming from a source other than the source for which Parliament provides? Could we hear from the government as to whether they agree with us?

Senator Cools: Just to clarify, honourable senators, I did not say that judges received salaries for their international activities. I said that CIDA funds many projects. However, I have no evidence and, as far as I know, judges are not receiving salaries from CIDA.

I wanted to put that comment on the record so that if Senator Carstairs responds, she will know what I said and what I did not say.

Senator Kinsella: I thank the honourable senator for pointing out the inaccuracy of my note taking.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank Senator Kinsella for the opportunity to clarify the government's position on this piece of legislation. I also want to thank my friend and colleague Senator Cools for her contribution this afternoon. However, as she knows, I do not agree with many of the propositions she has put forward in terms of the roles in which the government and I feel are quite appropriate for members of the judiciary to participate.

Like Senator Kinsella, I am of the view that our judiciary can do very good international work in terms of governance and rule-of-law issues. They have done it in the past, and I hope that they will continue to do so in the future.

Senator Cools made reference to a unanimous amendment that we in this chamber made to the bill. That amendment had to do specifically with lending a member of the senior judiciary in this country to fill the role of prosecutor in the war crimes situation in Bosnia and Herzegovina. In that particular case, the Senate in its wisdom — and I think we are usually very wise — made sure that it limited that permission to a single jurist due to the full-time nature of the work, the particular duties encompassed in the work and the uniqueness of the work. Justice Arbour was afforded that particular opportunity, and she has acted on behalf not only of Canadians but on behalf of the world community in seeking justice for war criminals.

From that perspective, Senator Cools is absolutely right. We did limit permission in that one instance, and I think we did so wisely. However, as I understood the amendment that we made to that bill, we did not in any way place restrictions on other judges doing international work on behalf of CIDA or other organizations. As Senator Cools indicated, they are not paid for the work that they do when they undertake these particular initiatives. They do so in an outreach manner so that the rule of law can spread from country to country, particularly in areas of the world where the rule of law is not a well-understood system of law and legal respect.

Senators Beaudoin and Murray will recall our trip to China. I think we were all shocked by the judicial process in that country. We were there providing aid and assistance to the emerging use of the rule of law in that country. I think those types of initiatives are extremely valuable.

In terms of this specific bill which, as Senator Lawson is quick to point out, is a compensation bill, the compensation is set by Parliament. Yes, there was a process of arbitration; but, in the final analysis, we are deciding what judges will be paid by our support of this legislation. I hope that clarifies the government's position.

[Translation]

Hon. Roch Bolduc: Honourable senators, my question is for the Leader of the Government in the Senate. Might we not

suggest that this expertise — exportable abroad, particularly to countries engaged in a reform of their judiciary system — might be provided by retired judges rather than practising ones?

There are many complaints in the country at this time about the slowness of the justice system. Throughout Canada, the superior and appeal court dockets are full, yet we are sending judges to other countries.

Another solution would be to use semi-retired judges. As honourable senators are aware, a person can work half-time at half-salary from the age of 65, a little like ourselves here in the Senate.

Judges have a very comfortable pension. In fact, a retired judge has about twice the income of a serving senator. Not that I am complaining about my income, honourable senators; on the contrary, I do not want one penny more.

[English]

Senator Carstairs: Honourable senators, I thank Senator Bolduc for his very interesting question. He mentioned the idea of using retired judges or those who are now supernumerary. We must recognize that judges do not have to retire until they reach the age of 75. Supernumerary judges frequently choose to become supernumerary because they want a less burdensome occupation. Whether those individuals will be ready, willing and able to go into Third World countries where the living conditions are not those of this country and to do the necessary work remains to be seen. I think it is an excellent suggestion. However, I still think we may need to use active members of the judiciary on occasion to fulfil our mandate not just to provide justice for Canadians, which is clearly their primary role, but to ensure that there is justice on a broader scale throughout the world.

Senator Cools: If I may again attempt to obtain clarification, Senator Carstairs has said that she disagrees on certain philosophical points, and I accept that readily. However, it is difficult to disagree on the facts. The facts of the matter are that the authority within the Judges Act for the judges of Canada to be involved in international activity is, at best, unclear and at worst, simply not there. That was the question that I had put to the Minister of Justice when she appeared before the committee. I understand that it is very easy to indulge in a little pride and to have a pride of authorship, in a way, and to say how wonderful it is that the judges of Canada are marvellous and doing wonderful work across the country. I still return to the fundamental fact: There is a long and lengthy constitutional history behind the role of judges and the Judges Act. It was put there many years ago for particular reasons, and some of the reasons were to avoid exactly what is happening now.

When I asked the Minister of Justice precisely what was the statutory authority within the Judges Act that allows the judges to travel around the world and be involved in building governments around the world, she referred to sections 56 and 57 of the Judges Act. I just read those two sections before, and very clearly there is no such authority in those two sections.

Perhaps I misunderstood, or perhaps I was not listening carefully enough, but I accept philosophically that Senator Carstairs disagrees with me. However, on the question of the statutory authority for judges to go across the world, what is that authority, and where is it in the statute?

Senator Carstairs: Quite frankly, honourable senators, I do not think there needs to be anything in the statute. It has been done by usage and convention. Many things that we do as senators do not have statutory authority. If one looks at the role of the cabinet, there is no statutory authority for that. I think it is fair to say that it has become part of the custom and usage of what judges have done. It is only an issue when that becomes the major form of employment of a particular judge, as it did with Justice Arbour, and in that circumstance we did meet a specific amendment to the Judges Act.

Senator Cools: With all due respect to Senator Carstairs, I have read the relevant section of the Judges Act, sections 54, 55, 56 and 57. Those sections clearly state that judges must be involved exclusively with judicial duties, and those sections, as I said before, have a particular historical origin in their obedience to section 100 of the BNA Act.

It is simply not accurate, or sufficient, to say that the judges can do such international work purely by convention. The Judges Act was created as a particular statute, developed over some 60 or 70 years, precisely to guide the exact nature of the employment, the remuneration and the manners of receiving money from the Parliament of Canada. It has a long constitutional history that cannot be ignored or denied.

The fact of the matter, honourable senators, is that there is absolutely no statutory authority. If there had been, we would not have had Bill C-42 before us four or five years ago. When that bill came before us, the minister of the day was asking for a very wide and general application. The Senate said no, and limited the application only to Louise Arbour. We must still answer this question: If Senator Carstairs is saying that there is no statutory authority or that none is required, then this is certainly a very odd situation because I would submit to senators that if Canada's judges could roam around the world doing other jobs, the benches of the land would soon be empty.

The Constitution of this land and the British Constitution has given to Parliament a special role in respect of guardianship and

protection. The old literature used to say the superintendence and protection of judges. I would say to Senator Carstairs that at some point in time, if not now or today, this chamber owes it to itself to settle this question. If there is a difference of opinion, it is simply not enough to say that there is a difference. I want to know what that difference is. I still come back to the essential point which is, as I maintain, that there is no statutory authority, and that what is going on needs the intervention of Parliament.

Senator Carstairs: Honourable senators, when we are called to the Senate we are told to drop everything, that we are to be here every single day the Senate sits. In actual practice, that is not what we do. In actual practice, many of us take on other engagements in the public sphere with respect to public business, and we represent the areas of our country by attending to those specific duties. That is not legislated; that is not in the oath but it is what we do and it is what we respect within this chamber, and we hope within the public at large.

When the bill talks about exclusivity, I do not think that it pretends to say that Parliament can dictate every single hour of every single day, 365 days a year, to members of the judiciary. There is sufficient leeway within the human dynamic to say that if some of our judges can be useful in the helping of governance in underdeveloped countries, then we lend them gladly to those causes, and we do so holding our heads extremely high.

Senator Carney: Honourable senators, I have a question.

The Hon. the Speaker: This sequence will be better if we let Senator Cools finish.

Senator Cools: I was not quite prepared to let Senator Carney go ahead. The fact of the matter is that some debate is required.

Perhaps Senator Carstairs should examine those relevant sections of the Judges Act with a little more attention because this is not simply referring to our summons. A lot of work and statutory history has gone into the question of what judges can do in terms of employment, and how they must be paid, and how they can be paid.

My question to Senator Carstairs is: Can a judge in Canada serve on the board of directors of Lavalin or DuPont International?

Senator Carstairs: Rhetorically, I could ask the question: Can a member of the Senate engage in that particular activity? Members of the Senate have engaged in that particular form of activity. Certainly, I know that judges in this country restrict themselves to charitable boards, to arts boards, and many serve with great distinction. To my knowledge, none of them have representation on corporate boards.

Hon. Pat Carney: I have a question to the Leader of the Government in the Senate arising out of her answer to Senator Cools, who makes the specific point that there is no statutory authority for the role of supernumerary judges roaming the world, and her comparison with senators. Is she suggesting that the government is opening a Pandora's box of precedents here and that the government would consider supernumerary, retired senators roaming the world on specific assignments? If so, I can recommend many excellent candidates from our side of the Senate chamber who are retiring this summer, such as Senator DeWare.

Senator Carstairs: We were not talking about supernumerary judges in the first instance; that came along in a later answer.

The judges who do this work do it without payment. It is not work for which they are provided additional payment. I hope that answers your question.

The Hon. the Speaker: Is the chamber ready for the question?

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, is it your pleasure to adopt the motion?

Hon. Senators: Agreed.

An Hon. Senator: On division.

Motion agreed to and bill read third time and passed, on division.

• (1540)

CANADA SHIPPING BILL, 2001

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Callbeck, seconded by the Honourable Senator Bacon, for the second reading of Bill C-14, respecting shipping and navigation and to amend the Shipping Conferences Exemption Act, 1987 and other Acts.

Hon. J. Michael Forrestall: Honourable senators, it gives me great pleasure to begin second reading debate on Bill C-14 on behalf of the opposition.

Senator Callbeck in her speech at second reading referred to the fact that this bill has been around for some five years. I can assure her, from my days as parliamentary secretary to the Minister of Transport, and chair of the transport committee in the other place, that this bill has had a gestation period of some 20 years. It only proves that if you stay around Parliament long

enough, you get to see some of the projects that you started actually reach completion.

Senator Angus, an expert on the legal and technical issues of this bill, will also be speaking from our side. That leaves me free to deal with some parts of the bill in detail, and to canvass more or less some of the broader policy issues in both shipping and ship building in Canada today.

First, however, the government is to be congratulated for the way it has approached the revisions to the Canada Shipping Act. In the last three years, we have dealt with Bill C-15, which received Royal Assent on June 11, 1998, and it dealt mainly with ownership, registration and mortgage issues of the Canada Shipping Act. In this Parliament, we have dealt with Bill S-17, which honourable senators will recall dealt with liability issues. We now have Bill C-14 in front of us, which I believe completes the reform of the balance of the Canada Shipping Act.

In putting this piece of legislation together, honourable senators, a fairly extensive consultation process has been carried out by government. I want to acknowledge that. Unlike some consultation processes carried out by this and other governments, I believe that, for the most part, the government has listened to the stakeholders in the shipping industry in Canada. I congratulate them for that.

This bill reorganizes and streamlines the Canada Shipping Act in several different areas. Definitions that appear in the act, for example, appear only when the ordinary dictionary meaning has been narrowed or expanded. Much technical detail has been removed from the act to be placed in regulations. While this is something with which we on this side of the house do not normally agree, it has satisfied the desires of the shipping industry. The industry has desired for some time a framework bill, with the rest of it contained in regulation, which could be more easily changed when necessary rather than having to go through the process of amending statute law.

This bill gives the right to impose liens for amounts due under contract of carriage and attempts to clarify the roles and responsibilities of the Department of Transport and Department of Fisheries and Oceans in relation to the many and varied parts of the Canada Shipping Act.

It also amends the Shipping Conferences Exemption Act, 1987, in order to bring it into line with Canada's major trading partners. The changes here were the subject of some disagreement between shipowners and shippers during the hearings in the other place, and I will refer to them in detail later.

First, I would like to highlight some of the issues that strike me as contentious upon my review of this bill. For example, Part 6 of the bill deals with incidents, accidents and casualties and attempts to clarify Transport Canada's role in accident investigation. I would like to hear from the Transport Safety Board on this issue because I do not believe we should pass anything into law that does not have the full endorsement and approval of the Transport Safety Board.

Parts 8 and 9 deal respectively with pollution prevention and response, which is the responsibility of the Department of Fisheries and Oceans; and pollution prevention, which is the responsibility of Transport Canada. I am concerned, as I know others are, that the jurisdictional split not harm our response to pollution control or prevention.

Parts 2 and 10 deal respectively with registration, listing and recording of commercial vessels of all sizes which is to be the responsibility of Transport Canada, while pleasure craft are to be the responsibility of Fisheries and Oceans regarding inspections, investigations, enforcement and licensing. Again, I hope that we have not created more problems than we have solved. In some areas of this country, a pleasure craft can also be a commercial vessel. I hope any confusion resulting from these two jurisdictions will be addressed in regulations and that we have not created a bureaucratic nightmare. The way around this would be to create a computerized system, but that creates its own problems in turn.

Honourable senators, Part 10 contains the enforcement provisions. Senator Callbeck quite rightly pointed out that these were the subject of some controversy in the industry. This issue should be looked at carefully by the Standing Senate Committee on Transport and Communications because the concerns raised seem to centre on the burden of proof required in the new enforcement regime. Administrative penalties carry a lower burden of proof than the present regime. There is also a concern about the lack of due process, the level of fines and the independence of adjudicators.

There are also practical realities that must be faced when reviewing the bill. While the bill establishes what I am sure drafters believe to be an effective regime to combat pollution at sea, the federal government's recent cutback on the number of Aurora aircraft doing patrolled surveillance, especially off the shores of Atlantic Canada, does nothing to help what the Minister of Transport is trying to do this in bill. We need enforcement backup and enforcement potential if this bill is to be effective.

A great deal of our pollution problem comes from unscrupulous captains flushing their bilge at sea. We need more surveillance flights, not fewer, to protect our fishery. This is also an area where the government should review the fines that are levied against polluters. Fines should be doubled or even tripled, particularly where there might appear to be culpable responsibility.

An issue raised by the Canadian Shipowners Association in committee in the other place dealt with the process of granting exemptions under this bill. By clauses 10(3) and 10(4) exemptions must be gazetted to be applicable. We fear this may create unnecessary delays that will negate the purpose of giving the exemptions in the first place. Speed is often of the essence.

I should like to turn to the controversy surrounding the changes to the Shipping Conferences Exemption Act. Shipowners like the changes; shippers do not. The shippers feel that the confidentiality of their contractual agreements is not protected and this prohibits them, in their view, from negotiating the lowest possible shipping price.

The government brought amendments at report stage that were designed to address this issue. These amendments should be studied in detail to ensure that they satisfy the concerns of the shippers and put our shippers on the same level, with the same protection as those in the United States and many of our other trading partners.

For the most part, witnesses appearing before the committee in the other place supported the bill, but had reservations concerning certain areas. These areas should be reviewed by senators carefully in committee because we have the time to get it right.

• (1550)

I wish to turn now to some things that were not addressed by the bill but that were brought before the Special Senate Committee on Transportation and Security, which I had the privilege to chair. During the life of that committee, we met with representatives of the marine industry in Vancouver, Montreal and Halifax. We also learned of the modernization of shipping regulations while we attended the second annual World Safety Conference at the University of Delft in the Netherlands. If we are to have a comprehensive shipping policy that goes beyond the four corners of this bill, these issues must be addressed.

The special committee heard from Michael Turner, then the Acting Commissioner for Canada's Coast Guard. He raised the issue of safety in relation to recreational boaters, as the Coast Guard has jurisdiction over recreational boating. More than 250 people are killed annually in this activity, which represents the highest death rate of any marine activity in terms of numbers of people involved and the resulting deaths. In the committee's interim report on this subject, we supported a Coast Guard initiative of placing age restrictions on those who operate certain types of pleasure craft.

The committee also heard evidence as to the training and the work environment in Canada's marine industry. There is a work ethic which has developed for as long as there have been ships sailing the oceans that those in charge must be on duty continuously until the work is done no matter how long that may take. David Bellefontaine, President and Chief Executive Officer of the Halifax Port Corporation, listed excess hours and fatigue of those involved in the marine industry, but especially longshoremen, as the major safety concern of the Port of Halifax. I suggest that other significant ports throughout Canada share that concern.

The lengthy hours worked without a break were also addressed by Secunda Marine Services Limited. Mr. John Hughes, their port manager, told us:

It is laid down that you should have eight hours of rest in a 24-hour period. I am well aware in the practical sense that this is often very difficult to achieve in an operating environment that is remote from any support.

Because of the culture that surrounds the marine industry and the work ethic assumed by those involved, hours of work become a safety issue, one that does not lend itself easily to a statutory solution. A tired crew is an ineffective crew that may put themselves and others at risk. This applies to longshoremen and indeed to all of those who work to exhaustion and beyond in the marine industry and, of course, in every industry.

Another matter closely related to the problem of long hours is the lack of investment in training and commitment by either government or industry to ensure that sufficient Canadians are trained to serve as mariners in both the short- and the long-term future. A lack of trained young people in the marine industry was identified by a number of witnesses as a great concern to the future of the marine industry.

Captain John Hughes of Secunda Marine termed the “provision of experienced personnel in sufficient numbers to meet the needs of government and industry” as “the biggest challenge facing the shipping industry in the decade ahead.” He is concerned that the pool of personnel power from which the industry has consistently drawn will dry up.

As well, he argues that cutbacks in adult education and the fact that there are insufficient tax advantages to employing Canadian mariners will diminish the number of Canadian-trained seamen. That view was shared by the Company of Master Mariners of Canada. Berths must be made available for young men and women. In times of constraint, it is difficult for the Coast Guard or commercial shippers to find sufficient funds to enable Canadians to gain the necessary expertise. As with Secunda Marine, they suggest that tax incentives should be considered for Canadian mariners.

In my opinion, renewed emphasis must be placed on training because as the marine workforce ages — and it surely is aging — safety concerns rise. While an aging workforce does not necessarily mean an unsafe workforce, it may mean that certain participants will become tired from excessive overwork. This brings the issue of safety to the forefront.

Given Canada's geography and the country's reliance on shipping for trade, I believe steps should be taken by the federal government in conjunction with the provinces and private industry to encourage Canada's young people to pursue a career at sea through the provision of an effective training program. As

well, consideration should be given to allowing tax advantages for Canadian mariners and the Canadian ships that employ them.

Honourable senators, while I know that some of these issues are dealt with in Bill C-14 and that others are beyond the periphery of the bill, I urge our Transport Committee to thoroughly discuss these matters, as they are vital to the future of the shipping industry.

Finally, I would be remiss if I did not say something about the state of the shipbuilding industry in Canada. We all know that a report entitled “Breaking Through” is on the desk of the Minister of Industry. This report contains recommendations to revitalize shipbuilding in Canada. We are in desperate need of a new shipbuilding policy because it is a pan-Canadian issue. Shipbuilding was addressed in some detail in the policies of my own party in the last election. Senators know that shipyards are located across Canada — British Columbia, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland. Canadian shipyards have the capacity to directly employ in excess of 10,000 Canadians. Currently, they employ less than 4,000.

Canada's shipbuilding industry is extremely sophisticated in terms of design and construction. Computer-based technology is comparable to that used in the aerospace industry for design, planning and production. There are many spin-off industries in the high-tech area from shipbuilding. It has been estimated that a vibrant shipbuilding and marine structures industry could create up to 6,000 new full-time jobs.

Canada's regulatory regime prevents the industry from competing successfully in the niche shipbuilding market — self-unloading bulk carriers, offshore oil and gas structures, tugs and supply vessels. Our competitors support shipbuilders at a much higher rate than we do in Canada.

In order to revitalize shipping, we must exclude Canadian-built ships from Revenue Canada leasing rules. Then, existing depreciation rates applicable to ships would apply without restrictions, and the tax disincentive of owning or leasing would be eliminated. This would stimulate the market for Canadian-made ships, as leasing is the predominant method of financing significant capital items such as a ship.

We must also consider guaranteeing private sector debt financing as done in the United States with long-term amortizations and financing of up to 87.5 per cent of the cost of a project. A refundable tax credit should be given to Canadian shipowners or shipbuilders who contract to build a ship or contract for the conversion or major refit in a Canadian shipyard.

The tax credit equivalent to 20 per cent of the cost of the initial ship of the series, 15 per cent for the second and third ships, and 10 per cent for the fourth would help to no end in stimulating this industry.

We should also promote to the greatest extent possible the building of Canadian military ships in Canadian shipyards. As suggested in the report "Breaking Through," we should negotiate the relaxation of the restrictive conditions of the United States "Jones Act" to allow Canadian ships to carry American cargo in American waters.

Honourable senators, all of this speaks to a comprehensive shipping policy for Canada. I look forward to our discussion in committee. I also look forward to Senator Spivak attempting to fold her bill restricting the use of Sea-Doos into this bill under the heading of "regulation of recreational boating." Like the absence of Senator Angus, I notice that Senator Spivak has just left the chamber.

On motion of Senator DeWare, for Senator Angus, debate adjourned.

• (1600)

FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Rompkey, P.C., seconded by the Honourable Senator Finestone, P.C., for the second reading of Bill C-18, to amend the Federal-Provincial Fiscal Arrangements Act.

Hon. Gerald J. Comeau: Honourable senators, I appreciate the opportunity to lead off the debate from this side on second reading of Bill C-18, to amend the Federal-Provincial Fiscal Arrangements Act, better known as the equalization act.

Since listening to Senator Rompkey's speech commencing second reading debate and later reviewing it in Hansard, I have had to spend considerable time adjusting my notes for this speech. I thought initially I could simply say in one sentence that I agree with the latter part of Senator Rompkey's speech in which he criticized the equalization formula and proposed alternatives to it.

However, due to the importance of the bill to all Canadians, I want to spend some time focusing on the deficiencies of the bill and the equalization system it purports to implement. I want first to thank Senator Rompkey on behalf of those of us who reside in less prosperous provinces for explaining in practical terms how equalization affects all Canadians.

There is a perception among many Canadians, including some politicians, especially in the other place, that equalization simply takes away from the rich and gives to the poor. I refer particularly to the words of the finance critic of the Canadian Alliance Party when he explained in the other place that this system results in low- and middle-income families in his riding paying more taxes to finance equalization. He talked of the

impact of improving the road system or the health care system used by higher than average-income people in recipient provinces.

Fortunately, Senator Rompkey set the record straight. I agree with his general description of the program. Equalization is a program of the Government of Canada. Every citizen of Canada pays for equalization according to his or her means. Equalization is a national program paid for by the Government of Canada using the money it raises by taxing every Canadian. Building on this, we must also recognize that this program is mandated by The Constitution Act, 1982, section 36(1) which reads:

Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to

(a) promoting equal opportunities for the well-being of Canadians;

(b) furthering economic development to reduce disparity in opportunities; and

(c) providing essential public services of reasonable quality to all Canadians.

Section 36(2) reads:

Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

The difference between the position advanced by the government and the position put forward from this side of the chamber centres on the meaning of the phrase "have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation." We do not believe that the solutions proposed by Bill C-18 are reasonable.

I believe that a short, historical review will be helpful in order to better understand the flaws in Bill C-18. The equalization program was introduced in 1957, and since that time has become a central feature of the Canadian federation. In fact, in 1997, the Auditor General referred to it as a vital feature, one of the main successes of our country.

In 1982-83, a ceiling was imposed on the program in order to deal with the possibility of wide fluctuations in payments due to increasing inflation and resource commodity prices. In fact, the ceiling should not have been necessary because of the move in 1982 to a five-province standard which excluded Alberta from the measure. Alberta's significant resource revenues were therefore no longer factored into the calculation of the equalization entitlements.

In the same period as the cap was imposed, the principle of equalization was enshrined in the Constitution. At that time, the current Prime Minister was the Minister of Justice, and in that position he spoke in support of the constitutional amendment resolution on October 6, 1980, specifically in relation to clause 36 to which I referred earlier. It is important to quote his statement on equalization in its entirety. He said:

I would like now to turn to another part of the resolution and speak about equalization. The practice of using federal revenues to redistribute wealth to the less advantaged provinces of this country is well accepted. Since 1957, unconditional transfers known as equalization payments have been made by the federal government to enable every province to provide a reasonable level of public services without having to impose an unreasonable tax burden on its residents. This practice has become so well established that it has now emerged as a fundamental "principle" of Canadian federalism. Sharing of the wealth has become a fundamental right of Canadians, and that is why the resolution entrenches the principle of equalization and commits both orders of government to promoting equal opportunities for the well-being of Canadians; furthering economic development to reduce disparity in opportunities and, specifically, providing essential public services of reasonable quality to all Canadians.

By entrenching this principle in the Constitution, we are enshrining the obligation of sharing which has been fundamental to the Canadian experience.

That was said by the then Justice Minister who is currently the Prime Minister. Later, he referred to equalization as part of the fabric of Canada. He also said that when times were hard, the rich have always helped the poor.

[Translation]

So what happened? This bill directly contradicts the principles defended by the Prime Minister now and the statements he made as Minister of Justice. How did this come about?

When it introduced Bill C-18, the government ignored the viewpoint expressed by the ministers of finance and the premiers of all the provinces since 1999, that is the permanent removal of the ceiling on equalization payments.

We are told this bill fulfils a promise made by the Prime Minister at a meeting of the first ministers last September, just before the general election was called. He promised then to remove the ceiling for the 1999-2000 fiscal year. Subsequently, the program is to be adjusted according to the rate of growth of the GDP. Unfortunately, and this is the essence of our argument against the bill, it reimposes the ceiling until fiscal year 2003-04.

[Senator Comeau]

What does this mean for the less prosperous provinces? The imposition of a ceiling means that the provinces benefiting from equalization receive payments smaller than those provided in the formula. The payments set by the equalization formula are adjusted according to the per capita ceiling. Accordingly, benefiting provinces no longer receive equalization according to the standard of the program in question, which increases the disparities the formula was intended to reduce.

Under Bill C-18, an arbitrary ceiling of \$10 billion was set for fiscal year 1999-2000. This is also the amount that is to apply until 2004. However, this ceiling does not apply to fiscal year 1999-2000, because it was removed for that year and reapplied for the following years. The provinces receiving equalization will get some \$10.8 billion for fiscal year 1999-2000. The effect of this ceiling on the coming fiscal years is devastating.

With the usual growth of the GDP and without Bill C-18, equalization payments would amount to \$13.9 billion in 2003-04. The bill would limit the amount to \$12.5 billion, and perhaps less.

What, in practical terms, is the impact of this reduction? In New Brunswick, Bill C-18 will mean a drop in forecast revenue of \$50 million. This amount would pay for approximately 11 days of health care for the residents of New Brunswick. It would pay the salaries of 1,000 nurses. It would build 25 kilometres of a new four-lane highway. On Prince Edward Island, it is estimated that the ceiling imposed by Bill C-18 will mean equalization payments that are \$9 million less than they would have been without Bill C-18.

• (1610)

This is more money than the province spends annually on technology development, fisheries, aquaculture and the environment.

In my province of Nova Scotia, the Deputy Minister of Finance, William Hogg, speaking to the House of Commons Standing Committee on Finance, pointed out that Bill C-18 placed Nova Scotia at a disadvantage competitively with respect to other provinces, and I quote:

As with most provinces, Nova Scotia is struggling to manage the rate of growth in health care costs, meet our educational needs, and properly fund all social programs. The difference between us, however, is our ability to respond to these pressures. Nova Scotia's ability to generate additional own-source revenues to maintain comparable service levels, while lowering its provincial tax burden to remain competitive, is genuinely threatened.

How can a province such as Nova Scotia hope to compete with larger economies that are posting staggering surpluses and are offering generous tax incentives to encourage investment by both individuals and business?

This is a good question. It is upsetting to see that, instead of defending the stand taken by Nova Scotia and other Atlantic provinces, the Liberal member for Halifax West, Geoff Regan, points to the size of the debt as the reason for Nova Scotia's problem. The minister responsible for the ACOA, Robert Thibault, said that the problem, particularly in Nova Scotia, lies in the fact that the provinces' debts are too large. That is the kind of support cabinet and the Liberal government give the Atlantic provinces.

The Liberal members are too weak to defend their provinces and their constituents. It is now up to us here in this chamber to act. This is the Senate's *raison d'être*. We have the right to speak on behalf of our regions. I know that it is difficult not to support one's party, but our regions come first, whatever the directives of Jean Chrétien and Paul Martin.

In our opinion, Bill C-18 is fundamentally flawed. We are pleased that the ceiling for the fiscal year 1999-2000 has been removed, but it must not be restored for the following years. The Prime Minister must make good on his promise.

The second issue that I want to raise regarding the equalization formula has to do with the clawback. This is precisely what is happening in Nova Scotia and in Newfoundland, in particular, with the revenues from the development of offshore oil. As Senator Rompkey said, this situation is easy to describe. The revenues of a province derived from the development of its resources are deducted from its equalization payments, since revenues from natural resources, including royalties, are part of the equalization revenues.

This is what triggered the equity campaign led by the Premier of Nova Scotia, John Hamm. He contends that, for each dollar in royalties from offshore oil, 70 cents are clawed back from the payments made by the federal government under the equalization formula.

During a discussion at the Standing Committee on Finance of the House of Commons between the new Liberal member of Parliament for Markham, Ontario, John McCallum — perhaps better known as the former Chief Economist of the Royal Bank and as a professor at McGill University before being relegated to the ranks of backbenchers — and officials from the Department of Finance, the clawback of tax credits was set at 100 per cent. Mr. McCallum indicated to the officials that the clawback becomes a deterrent to the development of resources. While there are agreements with Newfoundland and Nova Scotia that somewhat alleviate this clawback, they absolutely do not provide the support that these provinces need.

The best analogy that I can make is to compare this situation to that of a person who is trying to get off welfare and join the labour market. Senator Cohen and the others who participated in the Progressive Conservative Party's working group on poverty are very familiar with the issue. For each dollar that a claimant earns by working, an equivalent amount is deducted from his welfare benefits, thus making it extremely difficult for that

person to stop relying on social assistance. However, if welfare benefits are maintained at the same level and are not reduced for a year or for a certain period of time, the person can ultimately look forward, save money and get back on his feet.

This is all Premier Hamm is asking for in his campaign for equity: elimination of the clawback so as to allow Nova Scotia and the other less prosperous provinces to catch their breaths and get back on their feet. This is undeniably logical.

There must be a better distribution of gas royalties on offshore oil resources between the producing provinces and the federal government. This concept was part of the Progressive Conservative Party's platform in the last election and deserves the support of all members of this house.

When he resigned as Premier of Newfoundland in order to join the federal Liberal cabinet, the present Minister of Industry said the following on the equalization formula:

...offshore oil and gas development both here and in Nova Scotia has been made more difficult by the present equalization formula. The clawback in particular slows down the rate at which receiving provinces can attain the standard of living of the average Canadian.

In the context of a global economy...Alberta, Ontario and British Columbia know very well that it is in the national interest to improve the social and economic well-being of all provinces...This is why they support measures aimed at raising the economic level of all provinces. They know that their own regions benefit from equalization payments. They also know that less prosperous regions contribute to their prosperity, in a way. They provide young, educated and skilled workers for the prosperous provinces...which thus develop their economy.

This basic truth has not yet been grasped by Paul Martin, Jean Chrétien and the Liberal MPs.

Canadians are counting on us to keep this a country of which they can be proud. I call upon all senators to have the courage to represent the regions of this country, especially the less prosperous ones. Let us have the courage to make the government understand that Bill C-18 is unacceptable because it does not solve the real problems of equalization payments and regional disparity.

[English]

Before I sit down, I should like to note that Senator Rompkey and I did discuss — and I am sorry he is not here today — the need for a much deeper and broader look at equalization. We will be discussing this area further. We might suggest that the Senate give an order of reference to the Finance Committee to undertake an in-depth and detailed look at equalization. I see Senator Robichaud nodding his head — in approval, I should hope.

We suggest that the Senate Finance Committee take a serious look at the concerns raised on this side of the house and conduct a proper study.

Hon. John G. Bryden: Honourable senators, I wish to take a few moments to participate in the debate on Bill C-18. I will not go into the details of how the equalization formula developed or how it works. Those matters have been thoroughly explained by Senator Rompkey and, indeed, expanded on by Senator Comeau. What is more, I am not sure I understand these matters completely so I would allow their positions to rest.

• (1620)

There are several points that I should like to make. First, this bill is a limited measure to carry out the commitment that was made by the Government of Canada to the provincial governments as part of the deal involving the payment of \$22 billion or \$23 billion in health care funds and to remove the cap from equalization payments for one year. It is interesting to note, as Senator Rompkey indicated in his speech, that the removal of the cap, without going back to the history of how that occurred in the first place, had the effect of increasing the amount of equalization payments available to certain provinces.

To remind you, honourable senators, this means that each province will receive the following amounts for the year 1999-2000: Newfoundland and Labrador, \$36 million; Prince Edward Island, \$10 million; Nova Scotia, \$62 million; New Brunswick, \$50 million; Quebec, \$489 million; Manitoba, \$76 million, and Saskatchewan, \$69 million. What appears to be a significantly asymmetrical division arises because the distribution of the equalization payments is done on the basis of per capita, on the basis of how many people there are in each province.

It is quite clear that the continued removal of the cap in those years when equalization payments are available is done without consideration of whether the formula applied is that which it should be. It is not determined if this formula would continue payments of the same size as years passed. Following on the comments of Senator Comeau, and probably Senator Rompkey as well, a serious look should be taken at whether indeed the current formula is the one that works best in our contemporary society.

The provision in the Constitution Act, which basically says that the Government of Canada will guarantee the provision of basic services for all Canadians, is a right that applies to “have” provinces and “have-not” provinces, to poor Canadians as well as rich Canadians.

[Senator Comeau]

The formula appears to have worked well to a certain point. We have come a long way from the dirty thirties when our western neighbours did not have black gold pouring out of the ground or gas streaming to California. As I have been told during visits to the Prairies, citizens of certain communities would wait for the train to arrive to obtain their share of potatoes and salt fish from Atlantic Canada.

Since the 1940s and the 1950s, the assistance that has been required to level the playing field has moved in a different direction. The tremendous wealth produced from the ground and poured into the coffers of certain provinces has allowed those provinces to participate in the federal program that attempts to make level the playing field of the provision of services to all Canadians.

Honourable senators, there is a board game called “Gusher.” With the roll of dice, you land on a place on the game board and push down your derrick playing piece. If the piece does not press down, you have hit a dry hole. Another person rolls the dice and pushes down another derrick. If his piece does press down, he has hit a gusher. That player is paid a certain amount of funds for that gusher.

To some extent, the geography of Canada can be likened to that board game. If you push the derrick down in various places in Alberta, black gold comes out of the ground. If you push that same derrick down, until now, in the province of New Brunswick, you hit dry holes. There is no viable natural resource spilling out of the ground.

As a result, Alberta and, for the different reason of the automobile industry, British Columbia and Ontario are able to provide the best services for their citizens. As part of the Confederation, they are also able to spread some of those services, through equalization payments, to the “have-not” provinces.

It appears that Senator Comeau is a god because, now, when you push the derrick down in Nova Scotia, you might well hit a gusher. Indeed, a number of gushers have been hit in Newfoundland. You could dig a spade in the ground in Labrador and hit a nickel deposit worth billions of dollars. Hopefully, there will be “have” provinces in Atlantic Canada.

Justifiably so, these provinces are prepared to say that they want to keep a big portion of the benefits of the royalties because those royalties are coming from that province’s ground. The province would use the resulting funds to do for its citizens what Alberta has been able to do for its citizens for years. It makes a degree of sense to be able to do that.

• (1630)

Honourable senators, conditions change quickly, even in a small region like Atlantic Canada. For a long time, we were all in the same boat — poor as church mice — and we were considered the “poor cousins” of Confederation. In my estimation, we were made so by some of the rich cousins. Over the years, we tried to do the best that we could. As Senator Comeau indicated, we sent the best minds to run the banks, the auto companies and even some of the rich provinces, in some instances. We were always on the same team.

However, a number of problems are developing. One of them relates to the repayment of the funds — if we are required to repay — that were extended to us to maintain the services that allowed us to remain reasonably comparable to the richer parts of our country. Senator Rompkey’s comment is correct: It is not the case that the rich provinces give to the poor provinces. The fact is that if one is in a high tax bracket in a rich province, he or she pays a great deal of money to the federal government. If one is in a high tax bracket in a poor province, such as New Brunswick, one also pays a great deal of money to the federal government. Those people who are rich pay a great deal of money, and those who are poor do not pay as much.

Honourable senators, I do not think that Senator Rompkey’s analysis is quite complete because no matter how much the rich people in Nova Scotia or Newfoundland used to pay, we simply do not have enough rich people. Therefore, to provide the services, more of the money from rich people in B.C., Alberta and Ontario must be used to provide services in our provinces.

There is currently the possibility that at least two of our provinces, and hopefully all of them, will become rich — not a little bit rich but, like Alberta, filthy rich. They will have lots of money that will be derived from the natural resources in our ground — Atlantic Canadian ground. It is not Saskatchewan ground and it is not Quebec ground, but rather, it is our ground — our resources on which we will receive royalties. Why can we not keep it all so that we can be as rich as the people in Alberta or benefit as much as the people in Alberta?

Honourable senators, in all fairness, I do not think that our fellow Atlantic Canadians want to take it all and turn, from a resource point of view, Nova Scotia and New Brunswick, side by side, into a smaller duplicate of Alberta and Saskatchewan, side by side.

The Hon. the Speaker *pro tempore*: Honourable senators, Senator Bryden’s time has expired. Does the honourable senator request leave to continue?

Senator Bryden: Yes, please.

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

Hon. Senators: No.

The Hon. the Speaker *pro tempore*: Leave is not granted.

Hon. Tommy Banks: Honourable senators, may I address a question to Senator Comeau in respect to what he said?

An Hon. Senator: No.

Senator Banks: Honourable senators, I will then continue along the line of Senator Bryden. As a reminder, Alberta, filthy rich as it is, does not keep all of the money that is the result of our natural resources in the ground.

I remember, and it was not that long ago, that Alberta was a have-not province. Alberta stopped receiving equalization payments in 1961. To me, that is recent history.

With all due respect, the question that I would have asked, had I the opportunity, was in respect of the clawback. I am not certain that it is appropriate that the clawback concept be removed. In other words, if the have-not provinces can deduct from their share of resource revenue, would it also be the case that the “have” provinces could also make the same deductions for the purpose of calculating their contributions to the equalization fund? It is almost a rhetorical question because we all know what we want the answer to be.

Honourable senators, the pendulum to which Senator Bryden referred does swing, and we continue to hope that it swings in the direction of all the provinces. We must be careful that the clawback applies on both sides of the ledger sheet.

Senator Comeau: I am pleased that the honourable senator raised that point. I wish to ask Senator Banks a question. However, I will provide a preamble to ensure that the honourable senator is aware that in 1957, there was a form of equalization based on a three-income formula. Alberta, at that time, did not have to calculate its revenues from oil resources. Therefore, because of the type of formula in place at the time, Alberta was able to retain 100 per cent of its oil revenues. I do not know if the honourable senator is aware that there was no clawback then and that since 1982 a clawback provision has been applied.

The honourable senator is absolutely right: We must be careful how we view the issue, and we must also understand how some provinces were able to improve their status. Alberta, because of the tax regime at the time, was able to take its revenues over a period of time and invest them in petroleum-based chemical industries. Was the honourable senator aware of this factor back in 1957?

Senator Banks: Yes, I was aware of that. We could have a lengthy argument about the extent to which it took for those revenues to actually reach today’s levels. Development in Alberta did not happen until 1950. It took a long time for revenues to accelerate to the point that they contained six zeros. The regime has since changed, as the honourable senator pointed out.

Senator Bryden: Your honour, may I address a question to Senator Banks?

The Hon. the Speaker *pro tempore*: You may, Senator Bryden.

Senator Bryden: Would Senator Banks agree that the resources of a province are not only the in-ground resources but also the resources that are on and above the ground? In British Columbia, one of the major resources is trees. In New Brunswick, one of our major resources is trees. We have a vast amount of Crown land, proportionate to our size.

• (1640)

When we sell trees to be cut for logs or pulp, the province is paid a royalty called a stumpage fee, and those fees are included in the revenues of the province to determine how much equalization New Brunswick is entitled to. The same applies to the trees cut in Nova Scotia and in P.E.I. Similarly, proceeds raised from the sale of other resources would be treated in the same fashion.

To use a ridiculous example — because Nova Scotia would never allow this — if we were to exempt Nova Scotia Oil & Gas from having part of its royalties clawed back to give it a chance to catch up, would it not be fair for the same rules to apply to New Brunswick, whose resource is trees, and exempt the royalties, the stumpage fees, that the province is paid by the big paper companies or other producers, so that the fees would not be part of the formula?

Senator Banks: Thank you for the question. We are into an area about which I know nothing. Therefore, I decline to answer until I find out more about it.

Senator Bryden: With respect to the issue I have raised, I believe the honourable senator has not thought about whether those royalties would be the same as the royalties applying to oil or gas, or fish for that matter. He may or may not agree that once we open up the formula we have been living and working with, and people say they want their resources exempted, there will be a stampede of people like me or the Premier of New Brunswick coming forth to say, “What are we, chopped liver? These are trees, and the royalties are paid on them. Moreover, they are renewable. We will not empty the basin.”

The difficulties developing in Atlantic Canada among Prince Edward Island, New Brunswick, Nova Scotia, and Newfoundland reminds me of when I practised law, and always insisted that partners starting a venture sign legal agreements. They said, “Well, we are friends. If we go bankrupt, we will know.” You do not lose your friends when you are going broke; you lose your friends when a great deal of money is being made. Problems arise when someone believes another part of the partnership is getting a huge advantage. Therefore, I would suggest we support this simple removal of the cap for the period of time specified in order to carry out the deal that the first minister has made.

Senator Carney: Is that the question?

Senator Bryden: Honourable senators, I would have finished my speech, had I not been denied leave to continue. This

discussion will be very complicated. I suggest that, in the fall, we look seriously at having the Senate Finance Committee study this question, or some other group that is prepared to give it the serious thought required because of the implications involved.

Senator Banks: I will answer Senator Bryden by telling him that Senator Murray and I had a discussion this morning, and we anticipate a reference to the National Finance Committee of a study on the questions of equalization.

Hon. Nicholas W. Taylor: Honourable senators, marine geology has been my occupation for 40 years, and I pioneered in some of the drilling off Nova Scotia and Newfoundland. What is being overlooked is the fact that Ernest Manning, for example, used to enjoy getting money from Ottawa when we were rolling in oil wealth, since mineral resources were not considered income because capital was being sold. Alberta was lucky for a number of years to be called a have-not province because selling our oil and gas was considered selling our capital. That situation has been corrected.

Does my honourable friend not remember the parties? The Honourable Joe Clark was Prime Minister, and he did something which we prairie boys really thought was out of the ordinary, perhaps even going too far. Up to that time, the resources of the Maritime provinces had only been considered for about two and half miles beyond the shoreline, and beyond that fell under federal jurisdiction. Mr. Clark said “We will share with you, Nova Scotia and Newfoundland, any rights that Canada will have.”

Later, in international law, we extended the borders of countries, allowing them to have access to the ocean to the other's border. Newfoundland today has a share with the federal government halfway to Ireland. Nova Scotia has halfway to Bermuda. As for New Brunswick, P.E.I. sitting on the offshore keeps it from taking over.

Maritimers have a great deal because they have great land and they will be able to extract money from a far greater area than that in which the original province exists. Alberta and Saskatchewan can only extract minerals from within their borders. A sea coast did not do British Columbia much good because it called the whole area an underwater park and did not let anyone develop the resources. British Columbia might wake up one of these days and allow that to happen.

Per capita, the Maritimes have much more mineral area than almost any other area in Canada, all given by then Prime Minister Joe Clark. I wanted to let you in on that information because this has been my business for many years. The Maritimes have done well, and not only in oil. There is manganese, and the whole sea floor, which contains more than just fish, makes the Maritimes possibly one of the richest areas of the world. I recommend that if you have a grandson who is looking for a wife, you should send him to the Maritimes.

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

• (1650)

FEDERAL NOMINATIONS BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Stratton, seconded by the Honourable Senator Cohen, for the second reading of Bill S-20, to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions. (*Honourable Senator Cohen*).

Hon. Gerry St. Germain: Honourable senators, it gives me pleasure to rise today to take part in the second reading debate on Bill S-20. This bill, introduced by my friend and fellow westerner Senator Stratton, is an important contribution to the debate on parliamentary reform. Near the end of the last Parliament, I launched an inquiry on the subject of parliamentary reform. In my speech, I outlined three themes: the need for Parliament to reassert itself over the executive; the need for an elected Senate representing the regions of Canada, minority interests, and performing the legislative role of sober second thought on legislation; and the need for redistribution in the House of Commons and especially in the Senate to give western provinces more representation in Parliament.

Senator Stratton's bill speaks to my first theme, taking power back from the executive. In my speech, I dealt at length with the need to relax the whips in the House of Commons, and perhaps even here in this place on the government side, and the need for a complete attitudinal change on the part of members of House of Commons so they can exercise independent action, not caring if there is to be retribution from the PMO.

As part of wresting power away from the PMO and the PCO, I suggested that Parliament, particularly the Senate, become involved in the scrutiny of appointments by Order in Council. At that time, I was not sure how this could be accomplished, so I was particularly pleased when I reviewed Senator Stratton's bill.

As far as I am concerned, Bill S-20 is a nice compromise. It gives the Senate the authority to review a group of appointments but leaves the ultimate appointment still with the executive. Its true accomplishment is to shed light on a process which without Senator Stratton's bill is shrouded in secrecy, unfortunately.

The bill establishes in statutory form a nominations committee of the Privy Council. This committee is charged with the responsibility of developing criteria and procedures for the selection of people suitable for appointment to the positions listed in the bill. It then is to make recommendations on the suitability of candidates for these positions.

Clauses 8 and 9 require a minister, who is to recommend an appointment to a position covered by the bill, to select a candidate from the eligibility list established by the nominations committee. Notice must then be given by the minister of the minister's intention to appoint. Notice can either be given to both Houses of Parliament or through the *Canada Gazette*.

Clauses 10, 11 and 12 provide for review by the Senate in Committee of the Whole. We all know how very successful both our review of legislation and review of various annual reports of parliamentary officers has been in the Committee of the Whole in this place.

The bill sets out a strict timetable in which the Senate is to act and also allows for a process whereby ministers may make appointments immediately without prior Senate review in cases of emergency. In what I would hope would be a rare use of the appointments process, the Senate under this bill can carry out a review after the appointment is made. That indicates real fairness in this legislation.

The bill requires the criteria for appointment to be made public and sets out a process of review, and review only, whereby the appointee can be questioned about eligibility, qualifications for the position, and his or her views on the responsibilities of the position. I ask, how threatening to the process of appointment can this really be?

There are those who will argue, as Senator Banks has argued, that this bill leads us down the slippery slope to American-style hearings on judicial appointments. Are the opponents of this bill opposed to any form of scrutiny? Is scrutiny a bad thing, or are we afraid of the American side of things? The American side of things can be good and positive. I do not care whether it comes from America or Great Britain. If it is good, let us use it. Is it not strange that because of the U.S. system, which many criticize because it may tend to politicize the Supreme Court, we know more about the two recent candidates for the Supreme Court in the United States than we do about everyone combined on our Supreme Court. Yet, because of the Charter of Rights and Freedoms, the nine ladies and gentlemen who work just down the street from us have the ultimate power to determine the constitutional legitimacy of the laws we pass in Parliament. One can argue that ultimately they have more legislative power than we have because they have the last say.

I was particularly pleased when, during the Easter recess, a number of newspaper articles and editorials came out in support of Senator Stratton's initiative. It was termed a modest initiative, reflective of the man, because the legislation does not give the power to reject nominees. It was stated in the *Montreal Gazette* that:

Taxpayers deserve more openness in the naming of officials and bureaucrats who rule so much of our lives.

This bill deserves to be approved by this place at second reading and sent to committee — let us be fair, because it should be studied — for in-depth study. I hope those who believe in transparency and openness in government and those who believe in taking back some small measure of power from the executive branch will support it. I know about the power that resides in the executive branch because I was once a cabinet minister in the other place. I know how the place operates.

To those who are so concerned about the submission of judicial nominees to scrutiny by Committee of the Whole, I say, as someone who has run for political office, that the most obscure backbencher on the government side in the House of Commons has gone through a much more revealing public process than our judicial nominees are ever put through under the present process. We all know how little power those sitting in the last row on the government side in the House of Commons have when compared to the power of the judiciary, especially those on the Supreme Court of Canada.

Honourable senators, I believe we should support Bill S-20, with the sunshine that it allows in on a process that right now is viewed to be shrouded in a great amount of secrecy.

• (1700)

Hon. Nicholas W. Taylor: Honourable senators, I should like to ask a question of the Honourable Senator St. Germain. I was listening, and I am not sure that I heard aright, but did the honourable senator say that the process involving the review board would take place after the appointment had been made or before an appointment could be made?

Senator St. Germain: Honourable senators, it could be after, but only in the case of an emergency where the minister named someone immediately and the hearing process in the Senate or elsewhere would not have had time to take place. Only in that case would it take place after. Have I explained myself, honourable senators?

Senator Taylor: No, the honourable senator has not. Is a Senate appointment an emergency?

Senator St. Germain: Senate appointments may be examined. They could be an emergency. I saw them treated as an emergency when the GST debate was going on. Thus, there is that possibility, but it would only be done in the case of an emergency.

Hon. Tommy Banks: Honourable senators, I, too, should like to ask a question of Senator St. Germain. The whole form and operation of the Westminster parliamentary model resides in the fact that the Crown rises above the mere mewling mass of politics, whatever politics are, and that it is not tainted by politics. The bill in question, Senator Stratton's bill, contemplates that the viceregal representatives in this country, the Governor General and the lieutenant-governors of the provinces, would be subject to that same political scrutiny. Does the honourable senator concur that viceregals should also be subject to that review process?

Senator St. Germain: I thank the Honourable Senator Banks for his question. I think it is something that should be reviewed

[Senator St. Germain]

extensively in committee. I do not have a position on the review of those positions. However, I would certainly like to take part in the whole review process.

Our country is changing; we must reflect the changing political landscape. On that particular question, I am not hung up. I am a great supporter of the monarchy. In fact, I take issue with one of the ministers who has made comments to the media in recent days about the monarchy.

I am more concerned about the effect on Canadians in their day-to-day lives. I refer to the judiciary and the top-level Crown corporation appointments more so than that which relates to the honourable senator's question. This is something that should be studied fully in committee. I am sure that, under the auspices of the honourable senator, whom I consider to be very cooperative and logical, and Senator Stratton, whom I consider to be very capable, we can make a significant amount of progress.

On motion of Senator DeWare, for Senator Beaudoin, debate adjourned.

[Translation]

IMPERIAL LIFE ASSURANCE COMPANY OF CANADA

PRIVATE BILL—SECOND READING

Hon. Serge Joyal moved the second reading of Bill S-27, to authorize the Imperial Life Assurance Company of Canada to apply to be continued as a company under the laws of the Province of Quebec.

He said: Honourable senators, the purpose of Bill S-27 is to authorize the Imperial Life Assurance Company, a federally chartered insurance company, incorporated under a law of Canada in 1896, over 105 years ago, to continue as a corporation under the Quebec act respecting insurance, in view of its amalgamation with its sister company the Desjardins-Laurentian Mutual Life Assurance Company. This is the last time this company will appear before Parliament to have its charter amended.

It is necessary to pass private federal legislation because the federal insurance act contains no provision for Imperial to continue its activities as a provincially chartered company. It is not the intention of the Minister of Finance of Canada to amend the federal legislation at the moment. Accordingly, Imperial's continuation as a Quebec chartered company is prerequisite to its amalgamation with the Desjardins-Laurentian Mutual Life Assurance Company.

The new company that would emerge from the amalgamation would report to Quebec's Inspector General of Financial Institutions. This organization performs, for provincially chartered companies, the same functions as the Canadian Superintendent of Financial Institutions, in the case of federally chartered companies. The function of the two agencies is to assess the solidity of financial institutions, to ensure they are financially sound and to ensure the rights of the insured are maintained and respected.

As I will indicate shortly, the decision to amalgamate the two insurance companies was reached because of the benefits doing so would provide for the insured. Allow me to give you a brief overview of the two companies.

The Imperial Life Assurance Company was established by a federal act in 1896. Following various transactions since 1968, Imperial has been a subsidiary of the Mouvement Desjardins since 1993. For over 30 years, Imperial has been under the control of corporations established in Quebec. It is active throughout Canada and in the Bahamas. It also has a business portfolio in Hong Kong. While it is well known in Canada, Imperial is a small player, with premiums totalling slightly under \$500 million. It is much smaller than large insurance companies, whose premiums total between \$1 billion and \$3.6 billion. In future, it will be harder for Imperial to compete with these large Canadian insurance companies and with the foreign companies that do business in Canada.

The Desjardins-Laurentian Mutual Life Assurance Company is the result of the merger, in 1994, of the Desjardins Mutual Life Assurance Company and the Laurentian Life. At the end of 2000, the Desjardins-Laurentian Mutual Life Assurance Company merged with another subsidiary of Desjardins, the Laurentian Life Insurance Corporation. The Desjardins-Laurentian Mutual Life Assurance Company is a very solid company and it has permits to do business in every Canadian province. It is well established in Quebec, where it is number one in terms of premiums, with close to 16 per cent of the market.

The Desjardins Mutual Life Assurance Company and Imperial, which are both subsidiaries of Desjardins, have had a joint structure for the past three years. They have the same products and systems, and they have joint services and management. Consequently, from a business point of view, the legal merger is a perfectly logical step in the process to bring the two companies together.

By merging together, Imperial and the Desjardins-Laurentian Mutual Life Assurance Company will form a new company that will be more competitive to face Canada's major insurance companies.

Based on the financial statements of the two companies for last year, the new corporation will have assets of \$13.4 billion and an annual volume of premiums of \$1.5 billion, which is three times that of Imperial and which is more in line with the volumes reported by larger Canadian companies.

The new company will be on a more solid foundation and will be better equipped to grow. It will be stronger, larger, more financially sound and better capitalized. It will carry on its activities throughout Canada and in the Bahamas. This merger will create a new player that will rank seventh in Canada's insurance industry and that will thus be more competitive.

The most important aspect of the planned merger is that it is in the best interests of the insured themselves. In fact, insurance

coverage will be increased because the insurer will be larger and stronger, with fuller funding.

• (1710)

Participating insured will also retain their right to receive participating shares. Participating shares are in fact dividends paid by the company to insured who have insurance contracts with this option. These dividends vary according to a number of factors, such as technical results, operating costs, and the company's investment income. They are declared at the discretion of the insurer's board of directors. Following the merger of Imperial and Desjardins-Laurentian Life Assurance, the participating fund will be larger and therefore less subject to fluctuation.

In addition, like Imperial and Desjardins-Laurentian Life Assurance, the new company will also be a member of the Canadian Life and Health Insurance Compensation Corporation, an organization which administers the guarantee fund in order to protect Canadian policy holders.

Since the operational structure remains the same, the merger cannot have a negative impact on client service or daily activities. Insured will therefore continue to be served by the same staff in the language of their choice. Finally, the management of Imperial has already told its participating insured that the merger would in no way change the new company's investment policies. An assets management group is now managing the assets of the two companies and this same group will manage the new company's assets. As for the employees of the two companies, no positions will be abolished, nor will any offices be closed as a result of the merger, either for Imperial or Desjardins-Laurentian Life Assurance. Since the two companies already have common management, common services and the same systems, the merger will not have any impact on jobs because there will continue to be a common structure.

Activities in Toronto, where some 500 employees are now working, will continue as usual, and the three operating sites in Quebec — Lévis, Quebec City and Montreal — where there are almost 2,000 employees, will also be maintained.

In conclusion, whether from the point of view of business, customer protection or job maintenance, the planned merger is a solution for the future of both the Imperial and its sister company, Desjardins-Laurentian Life Assurance.

I should point out that the bill has already received the support of the regulatory authorities, an independent actuary, and participating Imperial policy-holders. In fact, the Superintendent of Financial Institutions, to whom Imperial reports at the present time, has been associated with the process from its inception and has indicated that he is in favour of the merger of Imperial and Desjardins-Laurentian Life Assurance, as is the independent actuary mandated by the two companies to give an opinion on the merger's impact on policyholders. He concludes in his report as follows:

The merger will preserve or improve existing services and the security and reasonable expectations of policy holders as far as benefits and participating shares are concerned; overall the merger is being proposed in the best interest of the policy holders and shareholders of both companies.

The merger of these two companies has received the approval of participating Imperial policyholders. The 100,000 or so policyholders were consulted according to the required procedure in early April, in a mailing that included an information package, a simplified brochure and a ballot. The response was highly significant. As was announced at Imperial's extraordinary general meeting held this past May 11 in Toronto, over 90 per cent of the policyholders who voted indicated that they were in favour of the planned reorganization.

This unequivocal policyholder support is without a doubt a convincing argument that cannot help but work in favour of continuing the merger plans. It is therefore certainly in Imperial's interest, and consequently that of the policyholders themselves, for the bill before this House to be studied in committee and eventually voted on by honourable senators.

Hon. Gérard-A. Beaudoin: Honourable senators, after they were introduced in this House, I had the opportunity to read the two private bills — Bill S-27 and Bill S-28 — Senator Joyal has just presented.

I understand there is currently no provision authorizing federally incorporated insurance companies, such as Imperial Life Assurance Company and Certas Direct Insurance Company, to seek continuance as a corporation under the laws of a province.

The two bills contain nothing contentious, and are put before us only because of the unique nature of the proposed reorganization, which, because of its singularity, is not covered under the Insurance Companies Act. In both cases, they serve the best interests of those insured by the two applicant companies.

The two bills have the support of the Office of the Superintendent of Financial Institutions, which oversees the operations of Imperial and Certas.

In the case of Imperial, participating policyholders were also publicly consulted on the bill, as is the custom with life assurance companies in such circumstances. The participating policyholders, who voted at a meeting on May 11, approved the bill by a majority of over 90 per cent.

Honourable senators, I support the recommendation by Senator Joyal that these two private bills be referred to committee.

The Hon. the Speaker: Honourable senators, if no other senator wishes to speak on this motion, it shall be considered to have been debated.

[Senator Joyal]

Motion agreed to and bill read the second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: When shall this bill be read the third time?

On motion of Senator Joyal, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

CERTAS DIRECT INSURANCE COMPANY

PRIVATE BILL—SECOND READING

Hon. Serge Joyal moved the second reading of Bill S-28, to authorize Certas Direct Insurance Company to apply to be continued as a company under the laws of the Province of Quebec.

He said: Honourable senators, I will try to restrict my few comments to the essential elements of Bill S-28. This bill seeks to authorize Certas Direct Insurance Company, a federally chartered insurance company, to continue its activities as a provincial insurance company under Quebec's Insurance Act, in order to merge with its sister corporation, les Assurances générales des caisses Desjardins.

The decision to merge these two insurance companies is part of a corporate restructuring and was made to maximize, among the same group of companies, the financial benefits of each one, with the ultimate objective of expanding business outside Quebec.

This type of administrative reorganization is common among financial groups of that size. A private bill is necessary for the purpose of this reorganization because these corporations are subjected to different jurisdictions. Otherwise, the Superintendent of Financial Institutions would have approved this restructuring himself. As I mentioned during the review of the private bill to authorize Imperial to apply to be continued, the Insurance Companies Act does not include any provision allowing an insurance company that was incorporated under this act to continue its activities as a provincially chartered company.

Canada's Superintendent of Financial Institutions, who currently has jurisdiction over Certas Direct, was involved in the process from the very beginning and was favourable to the merger of Certas and the Assurances générales des caisses Desjardins.

• (1720)

I will begin by giving a brief overview of the two companies in question. Certas Direct Insurance Company was incorporated in 1993 under the name CIBC General Insurance Company Limited, as a branch of the CIBC.

On August 31, 2000, the Société de portefeuille du Groupe Desjardins, assurances générales, a branch of the Mouvement Desjardins, bought CIBC's general insurance companies, the Personal Direct Insurance Company of Canada and CIBC General Insurance Company Limited, whose name was subsequently changed to Certas Direct.

Certas is a relatively young company which, in recent years, has had some large operating losses and therefore requires a restructuring of its business in order to further its future development. At the end of fiscal 2000, it had \$120 million in gross premiums written, with over \$100 million in tax losses.

Les Assurances générales des caisses Desjardins is a company incorporated under the Loi sur les assurances du Québec, which wrote over \$451 million in gross premiums in 2000. Assurances générales des caisses Desjardins is a very strong company which has had an ongoing history of profits for many years. It is licenced to operate in the province of Quebec only. With close to 9.6 per cent of the market, it is one of the most profitable loss insurers in Canada.

As part of the reorganization, a new federally regulated insurance company, the new Certas, will be created in order to pursue the activities of the former Certas outside Quebec. The issue of new insurance business will be done by this new federal company to which the former Certas will transfer all its current business.

This new federally regulated Certas will offer the same products and services. It is the former Certas, stripped of the current business transferred to the new Certas, but retaining the liquidation portfolio, which will be continued as a provincial company and merged with the Assurances générales des caisses Desjardins.

This merger is also in the best interests of the insured themselves and, more importantly, existing policies and future ones will be transferred to the new federally chartered company, which will be supported through new capital and growth strategies geared to that market.

Therefore, the interests of the insured will be protected and the merger will not have any effect on customer service and on daily activities. The insured will continue to be served by the same staff in the language of their choice.

As far as the employees of the two companies are concerned, the restructuring will not result in any job losses or office closures. Operations outside Quebec, which involve about 1,000 employees, will go on as usual. The two places of business in Quebec, namely Lévis and Montreal, which have close to 2,000 employees, will also be maintained.

In conclusion, whether it is business operations, the protection of the insured or the preservation of jobs, the merger is good for

the future of Certas Direct and of the insured. It is definitely in the best interests of Certas and the Assurances générales des caisses Desjardins and, consequently, in the best interests of the insured, that this bill be referred to the Standing Committee on Legal and Constitutional Affairs before senators vote on it.

Hon. Gérard-A. Beaudoin: Honourable senators, the comments that I made during my previous speech on Bill S-27 also apply to Bill S-28. Therefore, I support this bill for the same reasons.

Hon. Senators: Hear, hear!

The Hon. the Speaker: Are honourable senators ready for the question?

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

Motion agreed to and bill read the second time.

REFERRED TO COMMITTEE

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

On motion of Senator Joyal, bill referred to Standing Committee on Legal and Constitutional Affairs.

UNITED STATES NATIONAL MISSILE DEFENCE SYSTEM

MOTION RECOMMENDING THAT THE GOVERNMENT NOT SUPPORT DEVELOPMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Roche, seconded by the Honourable Senator Finestone, P.C.:

That the Senate of Canada recommends that the Government of Canada avoid involvement and support for the development of a National Missile Defence (NMD) system that would run counter to the legal obligations enshrined in the Anti-Ballistic Missile Treaty, which has been a cornerstone of strategic stability and an important foundation for international efforts on nuclear disarmament and non-proliferation for almost thirty years;

And on the motion in amendment of the Honourable Senator Finestone, P.C., seconded by the Honourable Senator Bacon, that the subject-matter of this motion be referred to the Standing Senate Committee on Defence and Security for study and report back to the Senate.—(*Honourable Senator Robichaud, P.C.*)

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, when I called for adjournment of this motion, there was a question as to which committee ought to have the motion referred to it. The motion in amendment dealt with its being referred to the Standing Committee on Defence and Security, a newly struck committee.

The author of that motion has completed his consultation. It was, moreover, for this reason that I had requested the adjournment, so that he could verify whether this was indeed the committee to which the motion ought to be referred.

I have since been informed that another senator would like to speak to this motion. I would therefore be happy to yield the floor to him, if he wishes to make his remarks now.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I would like a clarification on the interpretation of the motion in amendment. I will put my question to the Deputy Leader of the Government.

Senator Finestone's amendment asks us to refer the subject matter of the motion to a committee, but if I understand Senator Roche's proposal, the subject matter of the motion is to avoid any support for the development of a national missile defence system.

If my interpretation of the amendment by Senator Finestone is correct, it would mean that we would instruct a committee to take note of the subject matter of the motion and, directly or indirectly, we would speak against the American project, because the subject matter of the motion is to the effect that we take a stand immediately on a project of which we know nothing. Is my interpretation correct? I can only put the question to Senator Robichaud, unless someone else takes part in the debate. This concerns me considerably, and I should like to know exactly what the subject matter of the motion means and if my interpretation is correct.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, the subject matter of the motion concerns what the honourable senator has just said, that is, that we avoid involvement and support for the development of a national missile defence, commonly known as the NMD. However, on the subject of this defence system, very little information is available. It is discussed in vague terms, with no possibility of specifying the scope of the system or whether it would be deployed by sea, air or land.

In fact, the information is simply not available and so it is for this very reason that I think the Defence Committee could go after the information so that when the motion comes back from committee we can make an informed decision. At the moment, we clearly lack information.

[*English*]

• (1730)

Hon. Sheila Finestone: Honourable senators, I put my motion in amendment before the house in particular because so little is known about this field, which has enormous social, economic, cultural and financial implications for Canada. We need to study the issue before we take a position on it. I believe I made it quite clear that I think we should not abolish the ABM Treaty but, rather, support it.

I hope that clarifies the situation. I wished to have the matter referred to the Defence Committee for study. We cannot take a position on this matter until we know more about it.

Hon. J. Michael Forrestall: Honourable senators, I wish to comment briefly on the current position of the Government of Canada on the national missile defence system and, with the permission of the chamber, take the adjournment.

The Prime Minister has taken the stance that Canada should research the proposed system before establishing an official position. While this appears to be prudent, we may be allowing the opportunity to influence the United States in their policy to pass us by.

President Bush and his administration have consistently stated their desire to consult with their allies before any form of missile defence would be deployed. These consultations will not, and cannot, be based on the specifics of the missile defence program, since it currently has no established system. If they were to implement the program attempted by the Clinton administration, construction would have to begin by the end of 2001 in order to meet the target date of 2005. That program achieved limited results and President Bush has agreed that there were "inadequacies in such a program."

During President Bush's May 1 speech to the National Defense University, it became abundantly clear that our friends in the United States will pay little attention to the Anti-Ballistic Missile Treaty when and if they intend to move forward in their missile defence plans.

Secretary of State Powell hopes to hold a summit with Russia — although currently with no success — in order to renegotiate the ABM Treaty. President Bush openly stated that Secretary of Defense Rumsfeld has been looking into both land-based and sea-based options which might violate the ABM Treaty as it currently stands.

Honourable senators, may I remind that you that Secretary Rumsfeld headed the independent commission which produced the report which spurred former President Clinton to create a missile defence system that he had previously opposed. As our neighbours and allies, any system designed to protect the United States involving the development of increasingly advanced missile technology should be of the utmost concern to all of us as Canadians.

These consultations act as an opportunity for allies of the United States to comment on the political and social ramifications of the missile defence system. Secretary of State Powell will be speaking to NATO, as will Secretary of Defense Rumsfeld, by early June. President Bush plans to speak with NATO, Brussels and the European Union by mid-June. Meanwhile, the Government of Canada, understandably, has yet to express a firm position on the issue.

Honourable senators, I would hope that the Government of Canada would seek, through parliamentary committee consultations, to develop a clearer position and certainly clearer information with regard to the missile defence development and deployment by the United States, in whatever form that may take.

I wish to adjourn the debate in my name.

Hon. Douglas Roche: I should like to ask a question of Senator Forrestall.

The Hon. the Speaker: Senator Forrestall will have to agree to accept a question.

Senator Forrestall: With all due respect, I wish to decline any questions until I have finished my remarks, at which time I will be pleased to entertain any questions or comments.

On motion of Senator Forrestall, debate adjourned.

NATIONAL DEFENCE

QUALITY OF FAMILY LIFE IN THE MILITARY—INQUIRY— DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Cohen calling the attention of the Senate to the quality of life of the military family and how that quality of life is affected by government actions and by Canadian Forces policy.—(*Honourable Senator Wilson*).

Hon. Lois M. Wilson: Honourable senators, I rise to address the matter raised by Senators Cohen and Pépin concerning the quality of life of military families and how that quality of life is affected by government actions and by Canadian Forces policy. I do not intend to repeat their assertions which are on record. However, I support their statements and commend their remarks

for your study. This matter is especially pertinent since the Senate now has a newly formed Defence Committee.

The nub of the question on the quality of life of the military family was summed up in Senator Cohen's contribution when she quoted Lieutenant-General Mike Jeffrey as follows:

We are trying to change the culture of an institution while protecting the principles on which the institution is based.

In her book *No Life Like It*, which she co-authored with Lucie Laliberté, Deborah Harrison, then Chair of Sociology at Brock University, described the culture of the Canadian Forces. She described the main features of this culture as follows:

Male bonding is a very important feature of military culture, its purpose being to facilitate unit cohesion, considered indispensable for effective combat. The military ethos rests on two assumptions: the first being the idea of the omnipresent enemy, and the second, the assumption that force or violence is a legitimate way to solve conflicts. Following on from this is the principle of combat readiness. Because military personnel must constantly brace themselves for the ultimate — the sacrifice of their lives, or at least the risk of the same — combat readiness requires that they be tough and in control of a situation. Success in combat also requires a working chain of command. The military therefore place an enormous emphasis on hierarchy, orders, and obedience. The Code of Military Honour, for example, requires that members reveal secrets about their peers whenever supervisors ask them. In practice, this means that several, in self-protection, prefer not to know their peers' secrets.

On the other hand, one of the features of military life is the solidarity among peers. The team is everything. Flawless appearance is a requirement, and military wives soon learn to maintain a flawless image. Failure to maintain that image may have dire consequences. Wives therefore become extremely reluctant to disclose problems of a personal nature. Unit cohesion means conformity and those who are different may be perceived as a threat to social cohesion, which is so necessary in battle. A main military objective is complete control, since that will destroy the confidence of the enemy.

The authors conclude that “the military's negative attitude toward women is deeply embedded within its obsession of homogeneity, its methods of training for violence, and its traditions of male camaraderie.”

Some of what I have quoted will not commend itself to you. Some of it obviously needs to be acknowledged and changed. Surely most of the things mentioned constitute what the Lieutenant-General meant when he spoke of the need to change the culture of the institution.

• (1740)

Some of it, however, articulates the principles that need to be protected if this institution is to survive and do what it is meant to do. What we need to be doing is holding the two things together: changing the culture of the military while at the same time preserving the principles that are necessary for the survival of the institution, if that is possible. It is a very delicate balance.

In the context of this military culture, a major conclusion of the authors is that civilian women living in the Canadian Forces community experience special isolation, vulnerability and abuse. The May 2000 report on the issues of the Canadian Forces responses to women abuse in the military and of family violence among military families, to which Senator Pépin referred, made 51 recommendations to correct the situation. The main ones are that the Canadian Forces must understand and acknowledge that women abuse is a significant and serious problem in Canadian society and in the Canadian Forces community.

Another recommendation is that more resources be made available for the support of Canadian Forces women abuse survivors and their children.

In an assessment of what resource personnel have available to assist in resolving these problems, I was particularly interested in the comments about military chaplains. Chaplains are required to foster the well-being of Canadian Forces members' families, but they have no mandate to minister to former Canadian Forces spouses. The first priority is to serve Canadian Forces members rather than serve the members' families. However, the chaplain's role in violent situations is often more crucial than that of the social worker, given that the chaplain is on 24-hour call and has access to every level on the chain of command.

When a survivor of abuse seeks refuge in a women's shelter, it is frequently through the chaplain rather than the chain of command that shelter staff subsequently contact the base to arrange the survivor's visits to collect belongings or arrange visits with children.

There are two problems with military chaplains currently doing this job. The first is that they are military members and are encouraged to think like military members. They occupy a rank; they wear a uniform; they undergo basic training; they deploy on overseas missions. They also know that the career costs for members labelled as women abusers are high. Some chaplains, therefore, counsel survivors not to report abuses to the chain of command, or to drop charges, or to make allowances for their partner's stressful job.

A second problem is that most chaplains have not received training in women abuse dynamics either from the Canadian Forces or from theological colleges. There is a mistaken perception on the part of many Canadian Forces supervisors and survivors that they, in fact, have been trained to handle women abuse situations. Consequently, the tendency is to entrust chaplains with situations that they cannot and should not handle.

[Senator Wilson]

Chaplains who are ignorant of women abuse dynamics can make mistakes that have horrendous implications for survivors' lives.

Unquestionably, some women abuse survivors have been fortunate in their dealings with chaplains. However, much of their good fortune appears to have been a function of these military chaplains' personal qualities. Included in the 51 recommendations are a number dealing with the importance of training for human service professional personnel in the matter of identification of women abuse, gender dynamics and military resources that exist for survivors.

I hope more senators join in this inquiry. It is important that we contribute our ideas to help change the culture of the institution while at the same time protect the principles on which the institution is based.

On motion of Senator DeWare, debate adjourned.

THE SENATE

BRITISH COLUMBIA—ELECTION OF SENATORS—INQUIRY

On the Order:

Resuming debate on the inquiry of the Honourable Senator Carney, P.C., calling the attention of the Senate to the desirability of electing Senators from the Province of British Columbia to the Senate of Canada.—(*Honourable Senator Milne*).

The Hon. the Speaker: I must inform honourable senators that under rule 35, if the Honourable Senator Carney speaks now, her speech will close the debate on this item.

Hon. Pat Carney: Honourable senators, I have consulted with Senator Milne, who wished to speak to this inquiry, and she has decided not to.

I will take three minutes of honourable senators' time to read into the record a reply from the former Premier of British Columbia, Ujjal Dosanjh, to my suggestion that British Columbia reintroduce the Senatorial Selection Act to elect senators, as the retirement of Senator Perrault reopened this opportunity. Since there was interest, I wish to read into the record his reply.

I strongly agree that British Columbians desire better representation in a reformed Senate. I also agree that the sense of alienation that British Columbians often feel towards the federal government could be reduced if we had a stronger voice over the affairs of the nation. Having said that, I do not believe that holding elections to fill British Columbia vacancies would assist in addressing the fundamental issues facing the Senate. In fact, the election of senators at this time might undermine efforts to achieve the fundamental changes that are badly needed, such as the redistribution of seats to provide more equitable representation for British Columbia.

As you are aware, fundamental Senate reform would require a constitutional amendment, and subsequently a provincial referendum. While British Columbia is not opposed to Senate reform, at the present time, it is not a matter of priority to commence constitutional discussions. Our priorities continue to be protecting health care and assuring that British Columbians have access to high quality, affordable education.

I commend you for the very generous offer you have made to vacate your seat in order to provide momentum for change. Your devotion to the cause of improving British Columbia and Western representation in Ottawa is indeed laudable. I hope that we will have the opportunity to work together in the future to bring about the fundamental reforms to the Senate that are truly needed.

Again, thank you for writing on this important issue.

This, honourable senators, in my view, does close debate on this matter.

The Hon. the Speaker: If no other honourable senator wishes to speak, this inquiry is considered debated.

ASIAN HERITAGE

MOTION TO DECLARE MAY AS MONTH OF RECOGNITION— DEBATE ADJOURNED

Hon. Vivienne Poy, pursuant to notice of May 15, 2001, moved:

That May be recognized as Asian Heritage Month, given the important contributions of Asian Canadians to the settlement, growth and development of Canada, the diversity of the Asian community, and its present significance to this country.

She said: Honourable senators, on May 5, 2001, I attended a public forum in Calgary to kick off Asian Heritage Month. This year, for the first time, Calgary joined with Toronto, Vancouver, Montreal, Edmonton and Halifax to acknowledge and celebrate the important contributions of Asian Canadians. Throughout Canada there were screenings, readings, visual arts exhibits, theatre presentations and festivals in which Canadians of both Asian and non-Asian descent participated in community celebrations.

While various cities in Canada hold events to celebrate Asian heritage, British Columbia is the only province to have officially declared May as Asian Heritage Month. It first declared it in 1996 and has since proclaimed it on an annual basis.

In marking the fourth anniversary of the event in the year 2000, Premier Dosanjh and the Minister of Multiculturalism and

Immigration, Sue Hammell, noted the importance of Asians in British Columbia both historically and currently.

• (1750)

Hammell said:

The Asian-Canadian community makes enormous contributions to our province. The community has been here for more than a century, and its pioneers have left an impressive legacy. Succeeding generations continue to play important roles in the economic, social, cultural and political life of British Columbia.

The official provincial designation of Asian Heritage Month in British Columbia has helped to build grassroots support for the month-long celebrations.

In the United States, official acknowledgement of Asian-American contributions dates back more than two decades to 1979 when President Jimmy Carter designated May 4 to 10 as Asian-Pacific American Heritage Week. Later, President George Bush extended the week-long celebration to a month. Asian-Pacific American Heritage Month was proclaimed in October 1992. As a result of this official acknowledgement by the White House, events have been organized across the country during the month of May.

Asian contributions in the U.S. and Canada share some similarities. Asian pioneers, in particular the Chinese, played a major role in the construction of the railways in both countries, which helped to unite both nations physically and symbolically. Between 1881 and 1885, many gave their lives for what Pierre Berton described as “the National Dream.” It is not hyperbole to state that without the CPR, it is likely that Canada would not exist in its present form since it was the railway that joined the west to the east, allowing for structural and political union.

Asians settled in Canada over a century ago. Invariably, like other immigrants, they came in search of a better life. Despite being initially exploited as cheap labour, communities flourished as businesses grew. Like the French and English pioneers, Asians helped to build this country with their own hands, working in Canada’s natural resource industries.

The Japanese were consummate fishermen. The Chinese were involved in mining, forestry and the cannery industry. The South Asians initially worked in the lumberyards with a few opening their own mills. However, their industriousness was not always appreciated in the past and, as we all know, there were many attempts to curtail Asian immigration, as well as to limit the rights and freedoms of Asian Canadians.

When the United States passed an act to designate Asian-Pacific American Heritage month in 1992, nearly 8 million people in the United States could trace their roots to the Asia-Pacific region out of a total population of 250 million. In comparison, as of 1996, nearly 2 million Canadians, or almost 7 per cent of the population, identified themselves as being of Asian origin.

In addition, the percentage of Canadians of Asian origin in the population has increased over the last five years as Asia is now the number one source of immigrants to Canada. It will come as no surprise that the third most spoken language after English and French is Chinese, followed closely by an array of Asian languages such as Vietnamese, Tagalog, Punjabi and Tamil. With the declining Canadian birth rate, Asians will account for much of the population increase since the last census. In fact, a recent report puts the percentage of Asians on the West Coast at about 18 per cent, with the result that in the last provincial election in British Columbia, Asians of Indian, Filipino and Chinese descent competed for parties that spanned the political spectrum from left to right. In the future, Asians will continue to play an increasingly important role in the development of Canadian society.

There has been a growing recognition of the importance of the Asia-Pacific community in international trade over the last decade. Our government has paid close attention to this trend by placing an emphasis on developing linkages with this region. One of Canada's major assets in its quest for closer cultural, political and economic ties with the region is its population of Asian descent.

As Canadians, we pride ourselves on the diversity of our nation and on our tolerance and respect for differences that we have come to realize are our greatest strength. We have even enshrined these principles in the Multiculturalism Act of 1988. Nevertheless, we have been slow to recognize the historic and present day contributions of our multicultural communities at a national and institutional level. We have been much slower than the United States which, while it describes itself as a melting pot, has established Asian-American academic programs at universities across the country.

The influence of Asians on our collective culture is evident when we examine the current state of Canadian literature. The voice of Canada, as it is reflected to the world, is increasingly multicultural. There are many writers of Asian descent who have won numerous national and international literary awards, names such as Paul Yee, Michael Ondaatje, Anita Rau Badami, Shauna Singh Baldwin, Wayson Choy and Rohinton Mistry. Joy Kogawa's moving novel, *Obasan*, changed forever the way we viewed our past and may have influenced the Japanese Canadian redress settlement in 1988. It is now required reading in many classes in Canada and across the United States. These writers are reshaping how we define what it means to be Canadian.

Canada is benefiting from the diversity of these new voices. Nationally, our culture is maturing as we recognize and integrate new visions of our past, present and future into our collective story. Internationally, we are now recognized for our dynamic literary style within which cultures overlap as the protagonists move across time and space.

Through our literature, we suggest to the world that our brave multicultural experiment is a success. This is not to suggest that

[Senator Poy]

Asian contributions are limited to literature. Canadians such as Dr. Lap-Chee Tsui of Toronto, who is a major contributor to the international project in mapping the human genome, and geneticist David Suzuki of Vancouver, who hosts one of the most popular programs on the environment, have become internationally renowned for their contributions to science. Norman Kwong, of Calgary, won the Order of Canada for his contribution to football, along with entry into three sports halls of fame. Financially, Asians have influenced the Canadian business world with their innovative and entrepreneurial spirit.

Honourable senators, while the effect of this motion is largely symbolic, I believe that such symbols are necessary to indicate that our federal government remains committed to encouraging Canada's multicultural communities, both in policy and in practice.

As in British Columbia and the United States, where Asian Heritage Month has long been recognized, this motion would serve as a rallying point around which events can be organized across the country. Even more important, it would publicly acknowledge the contributions of Asian Canadians to the economic, social and cultural development of Canada as a nation.

Honourable senators, I believe it is time we recognized Asian Heritage Month. I hope you will join me in supporting this motion.

Hon. Pat Carney: Honourable senators, I am proud to second Senator Poy's motion that May be recognized as Asian Heritage Month.

The Hon. the Speaker: Before Senator Carney proceeds further, I must note that it is six o'clock. Honourable senators, is there agreement not to see the clock?

Hon. Senators: Agreed.

Senator Carney: Honourable senators, I will give a shortened version of my speech since Senator Poy and I cover much the same ground. I thank honourable senators for allowing me to put these points on the record.

B.C. is the only province to have officially designated May as Asian Heritage Month. Vancouver joins over 30 other North American cities in celebrating May as Asian Heritage Month. About 34 per cent of our population in the greater Vancouver area is of Asian descent.

During this month, Chinese, Filipino, First Nations, Hawaiian, Indian, Japanese, Korean, Polynesian and Vietnamese artists and performers have been showcasing the diversity of Asian arts and culture in Vancouver, with over 120 events staged by 40 diverse groups, companies, ensembles and organizations on the theme of common crossing cultures.

• (1800)

This year's celebration has been focusing on cross-cultural activity. Just as in times past the Chinese planted rice in Mexico and the Hawaiians worked with First Nations people in little-known relationships dating back 200 years, Asian Heritage Month will focus on the cross-cultural dimensions of contemporary work. Some of the activities include tea-tasting, martial arts, Chinese calligraphy and painting, documents, theatre, music, dance and the spoken word.

Senator Poy has talked about some of the history of Asian Canadians in B.C. The first Asian Canadians in B.C., of course, were the Chinese who arrived in the mid-1800s.

Hon. Peter A. Stollery: On a point of order, honourable senators, it is the hour of six o'clock.

The Hon. the Speaker: Senator Stollery is quite right. He was perhaps distracted when I asked if the house wished not to see the clock and it was unanimously agreed that we would not.

Senator Stollery: I am seeing the clock, honourable senators.

The Hon. the Speaker: That is an interesting point, but I would rule that the house has given unanimous leave to proceed. That has the effect of a rule of the Senate and, accordingly, we are in order to proceed without seeing the clock. That leave was granted unconditionally earlier.

Senator Carney: I referred to the fact that the Asian-Canadians came in the middle of the 1800s to British

Columbia: first, the Chinese with the Gold Rush and then the Japanese in about the 1870s, and the South Asians early in the 20th century. Senator Poy has covered some of their contributions.

I want to make clear to my colleagues that when we talk about Asian Heritage Month, we are talking about the present-day face of Vancouver. I made note of some of the Asian-Canadian presence in the present cityscape: There are Asian languages on our college campuses; there are Asian-Canadian faces in banks and stores; there is Asian signage on street corners and in the airports; there are the crowds at the Dr. Sun Yat Sen garden, the only authentic Ming garden outside of China and the only one built in the last 400 years; there are Buddhist temples in Delta and Indo-Canadian temples in Surrey. We have the shopping centres in Richmond and Japan Town and the popular dragon boat races. There is the SUCCESS social agency that does so much work with immigrants.

The Asian-Canadian presence is very much a part of our existence in Vancouver. The future of Canada and Vancouver will reflect the vibrancy, the energy and the intellectual stimulation of many of our Asian Canadians. While this may be Asian Heritage Month, I like to think that every day is Asian Heritage Day in Canada.

Hon. Senators: Hear, hear!

On motion of Senator Finestone, debate adjourned.

The Senate adjourned until Wednesday, May 30, 2001, at 1:30 p.m.

CONTENTS

Tuesday, May 29, 2001

	PAGE		PAGE
Visitors in the Gallery		QUESTION PERIOD	
The Hon. the Speaker	927	National Defence	
<hr/>		Replacement of Sea King Helicopters—Possible Change to Basic Vehicle Requirements—Effect on Involvement of Eurocopter.	
SENATORS ' STATEMENTS		Senator Forrestall	930
Canada-Russia Parliamentary Group		Senator Carstairs	931
Meeting of Parliamentarians. Senator Prud'homme	927	Replacement of Sea King Helicopters—Briefing of Leader of the Government on Competition. Senator Forrestall	931
Future of the Monarchy		Senator Carstairs	931
Senator Joyal	927	Replacement of Sea King Helicopters— Possible Change to Basic Vehicle Requirements—Effect on Involvement of Eurocopter. Senator Tkachuk	931
The Late Beverly Mascoll, O.C.		Senator Carstairs	931
Tribute. Senator Cools	928	Senator Forrestall	932
National Safe Boating Week		Senator Carney	932
Senator Christensen	928	Senator Stratton	932
Visitors in the Gallery		Prime Minister's Office	
The Hon. the Speaker	929	Request for Statement on Convention of Collective Cabinet Responsibility. Senator Murray	933
<hr/>		Senator Carstairs	933
ROUTINE PROCEEDINGS		Delayed Answer to an Oral Question	
Study of Present State of Domestic and International Financial System		Senator Robichaud	933
Budget and Request for Authority to Engage Services—Report of Banking, Trade and Commerce Committee Presented. Senator Kolber	929	Statistics Canada	
Adjournment		Census Questionnaire—Canadian Linguistic Duality Question by Senator Rivest	
Senator Robichaud	929	Senator Robichaud (Delayed Answer)	933
National Finance		Answer to Order Paper Question Tabled	
Notice of Motion to Authorize Committee to Study Role of Government in Financing Deferred Maintenance Costs in Post-Secondary Institutions. Senator Moore	929	Justice—Sale of Airbus Aircraft to Canada —Status of the RCMP Investigation. Senator Robichaud	933
Defence and Security		Pages Exchange Program with House of Commons	
Notice of Motion to Authorize Committee to Conduct Survey of Major Security and Defence Issues. Senator Kenny	930	The Hon. the Speaker	933
Notice of Motion to Authorize Committee to Engage Services. Senator Kenny	930	<hr/>	
Notice of Motion to Authorize Committee to Permit Electronic Coverage. Senator Kenny	930	ORDERS OF THE DAY	
Notice of Motion to Authorize Committee to Change Name. Senator Kenny	930	Judges Act (Bill C-12)	
Access to Census Information		Bill to Amend—Third Reading. Senator Fraser	934
Presentation of Petitions. Senator Milne	930	Senator Beaudoin	934
<hr/>		Senator Cools	935
		Senator Lawson	939
		Senator Kinsella	939
		Senator Carstairs	940
		Senator Bolduc	940
		Senator Carney	941
		Canada Shipping Bill, 2001 (Bill C-14)	
		Second Reading—Debate Continued. Senator Forrestall	942
		Federal-Provincial Fiscal Arrangements Act (Bill C-18)	
		Bill to Amend—Second Reading—Debate Continued.	
		Senator Comeau	945
		Senator Bryden	948

Senator Banks	949
Senator Carney	950
Senator Taylor	950

Federal Nominations Bill (Bill S-20)

Second Reading—Debate Continued. Senator St. Germain	951
Senator Taylor	952
Senator Banks	952

Imperial Life Assurance Company of Canada (Bill S-27)

Private Bill—Second Reading. Senator Joyal	952
Senator Beaudoin	954
Referred to Committee.	954

Certas Direct Insurance Company (Bill S-28)

Private Bill—Second Reading. Senator Joyal	954
Senator Beaudoin	955
Referred to Committee.	955

United States National Missile Defence System

Motion Recommending that the Government Not Support Development—Debate Continued. Senator Robichaud	956
Senator Lynch-Staunton	956
Senator Finestone	956
Senator Forrestall	956
Senator Roche	957

National Defence

Quality of Family Life in the Military—Inquiry— Debate Continued. Senator Wilson	957
---	-----

The Senate

British Columbia—Election of Senators—Inquiry.	958
Senator Carney	958

Asian Heritage

Motion to Declare May as Month of Recognition— Debate Adjourned. Senator Poy	959
Senator Carney	960
Senator Stollery	961



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