it will be totally undermined and in fact will lose its political base in the country.

The government very quietly introduced a piece of legislation which I guess superficially is a good idea. We do not have cash in the health care system, scoop the cash out of other programs and force the provinces to behave just the way you think they should.

Which programs can they scoop out? Let us take a look at this: equalization payments, a total of about $8.4 billion is available to them; territorial financing, about $1 billion is available to them; grants in lieu of taxes, $344 billion is available to them; the public utilities income tax transfer, another $280 million; statutory subsidies, $36 million; the Canada Assistance Plan, that is available to them now, $6.4 billion; crop insurance, $270 million; the formula payments under the official languages and education, $243 million; miscellaneous health and welfare transfers, $170 million; the young offenders services, $158 million; justice transfers, $77 million; transportation transfers to provinces and municipalities, $69 million. All these are now made vulnerable because of this particular strategy of the federal government.

Many groups came to us with the firm belief that this was not only mean spirited but in fact was unconstitutional. We were presented at committee with the legal opinion by a Toronto law firm, Goodman & Carr, that Bill C–20 was vulnerable to constitutional challenge. For one of the few times in the history of the House of Commons, and I would have to ask the Table when they had seen it before, this legal opinion has been appended to the report of the committee to the House so that the minister fully understands that committee members were concerned about the constitutionality of clause 4 and the strategy of taking transfer payments from other programs to protect health care.

The reason for the seriousness with which we approach this is as follows. The law firm points out that Parliament has a capacity to unilaterally alter the terms of a range of existing federal–provincial fiscal arrangements, but the question is can these changes be imposed for the express purpose of supplementing the federal government's dwindling cash contribution to provide health insurance plans and preserving its ability to enforce national standards and health care through the Canada Health Act.

The opinion of the law firm is that as a matter of strict legal principles, they cannot, that Bill C–20 is vulnerable to a constitutional challenge on grounds discussed within its opinion. The question of Bill C–20's vulnerability to constitutional challenge must be answered with reference to the organizing principles of the Canadian state. Canada is a federal state, as they point out. This means that the totality of legislative power theoretically available to the government of any state is shared by two levels of government and that one cannot move into another area without a history of legislation and discussions and laws.

By contrast, it may be argued that to enact legislation such as the Canada Health Act which in addition to providing for the mechanics of the transfer requires provinces to make specified policy choices, that is health insurance plans would be publicly administered on a non–profit basis, is to find indirectly what the federal government cannot do directly due to its lack of legislative competence.

• (1650)

It goes on in this particular decision to point out that there has been a shift in position by the federal government which is very important. This shift is away from voluntarism, which is an argument that a province could choose to pursue different policy objectives from those established by the federal government in the Canada Health Act by simply choosing to forgo the federal cash contribution to its health insurance program.

The national standards established by the act appear very different in the light of Bill C–20, however, compulsory rather than voluntary. In this case if a province chose to exercise its legislative competence and enact legislation which conflicted with the Canada Health Act, the federal government would be entitled to penalize the province by withholding an amount that reflected the gravity of the breach of standards from any moneys owed to the province by the federal government.